

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, )  
v. Plaintiff, ) Criminal Action  
TAREK MEHANNA, ) No. 09-10017-GAO  
Defendant. )

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE

DAY THIRTY-THREE  
JURY TRIAL

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Tuesday, December 13, 2011  
9:18 a.m.

Marcia G. Patrisso, RMR, CRR  
Cheryl Dahlstrom, RMR, CRR  
Official Court Reporters  
John J. Moakley U.S. Courthouse  
One Courthouse Way, Room 3510  
Boston, Massachusetts 02210  
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

## 1 APPEARANCES:

2 OFFICE OF THE UNITED STATES ATTORNEY  
3 By: Aloke Chakravarty and Jeffrey Auerhahn,  
4 Assistant U.S. Attorneys  
John Joseph Moakley Federal Courthouse  
Suite 9200  
Boston, Massachusetts 02210  
- and -  
UNITED STATES DEPARTMENT OF JUSTICE  
By: Jeffrey D. Groharing, Trial Attorney  
National Security Division  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
On Behalf of the Government

9 CARNEY & BASSIL  
10 By: J.W. Carney, Jr., Esq.  
Janice Bassil, Esq.  
John E. Oh, Esq.  
11 20 Park Plaza  
Suite 1405  
12 Boston, Massachusetts 02216  
- and -  
13 LAW OFFICE OF SEJAL H. PATEL, LLC  
By: Sejal H. Patel, Esq.  
14 101 Tremont Street  
Suite 800  
15 Boston, Massachusetts 02108  
On Behalf of the Defendant

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I N D E X

## DIRECT    CROSS    REDIRECT    RECROSS

WITNESSES FOR THE  
DEFENSE:

MARK SPENCER

by Ms. Patel  
by Mr. Chakravarty

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55

41

THOMAS F. CONNOLLY

by Ms. Bassil  
by Mr. Auerhahn

57

79

THOMAS DALY

Voir dire  
By Mr. Carney

94

HEIDI WILLIAMS

Voir dire  
By Mr. Carney

131

## E X H I B I T S

GOVERNMENT'S

## DESCRIPTION

FOR ID IN EVD.

VD-001      Emails between Messrs. Chakravarty and Carney dated 12/9/04

131

VD-002 Email to Mr. Carney from Mr. Chakravarty  
Dated 12/6/11

121

(Cont'd)

1                   E X H I B I T S

2	<u>DEFENDANT'S</u>	<u>DESCRIPTION</u>	<u>FOR ID</u>	<u>IN EVD.</u>
3	1278-	Documents recovered from defendant		
4	1279	at airport		34
5	1151-	Images found on defendant's computer		40
6	1177			
7	1283	Marked-up copy of transcript of Umar Hadeed video		63
8	1281	Screen shot from Umar Hadeed video		67
9	1280	Screen shot from Umar Hadeed video		68
10	1284	Marked-up translated document		77
11				
12				
13				
14				

15                   (The following proceedings were held in open court  
16 before the Honorable George A. O'Toole, Jr., United States  
17 District Judge, United States District Court, District of  
18 Massachusetts, at the John J. Moakley United States Courthouse,  
19 One Courthouse Way, Boston, Massachusetts, on December 13,  
20 2011.)

21                   The defendant, Tarek Mehanna, is present with counsel.  
22 Assistant U.S. Attorneys Aloke Chakravarty and Jeffrey Auerhahn  
23 are present, along with Jeffrey D. Groharing, Trial Attorney,  
24 U.S. Department of Justice, National Security Division.)

25                   THE COURT: Good morning, jurors. Counsel.

1                   MR. CARNEY: Good morning, your Honor.

2                   THE COURT: Who's next? Miss Patel.

3                   MS. PATEL: Good morning, your Honor. We'd like to  
4 call Mark Spencer, please.

5                   THE CLERK: Sir, you want to step up to the box,  
6 please.

7                   MARK SPENCER, Sworn

8                   THE CLERK: Please be seated. State your name and  
9 spell your last name for the record. Keep your voice up and  
00:00 10 speak into the mic.

11                  THE WITNESS: Mark Spencer, S-p-e-n-c-e-r.

12                  DIRECT EXAMINATION BY MS. PATEL:

13                  Q. Good morning, Mr. Spencer.

14                  A. Good morning.

15                  Q. Would you please tell the jury where you work?

16                  A. I'm the president of Arsenal Consulting, a computer  
17 forensics consulting firm in Chelsea, Massachusetts.

18                  Q. What does a computer forensics consulting firm do?

19                  A. We preserve, analyze, and report on electronic evidence.

00:01 20           Q. What was your educational background before you worked at  
21 Arsenal?

22                  A. I have a bachelor of arts in criminal justice from UMass  
23 Boston and graduated from the Massachusetts Criminal Justice  
24 Training Council's Reserve Intermittent Training Academy for  
25 part-time police officers.

1 Q. Do you have any certifications?

2 A. I do. I have a variety of certifications that show  
3 aptitude in computer forensics in general, as well as  
4 particular tools. I'm EnCase certified, AccessData certified,  
5 ProDiscover certified. These are all computer forensics tools.  
6 I'm also certified by the Digital Forensics Certification  
7 Board, which is an organization funded by the National  
8 Institute of Justice. And I'm also QualysGuard certified.

9 Q. What's the significance of those certifications?

00:02 10 A. Again, those certifications are meant to test and  
11 demonstrate aptitude either in computer forensics in general or  
12 in terms of the use of a particular tool.

13 Q. Do you lecture or teach in this area?

14 A. I do. I've taught at Bunker Hill since 2008, Computer  
15 Forensics in particular. I've been a faculty member of the  
16 Computer Security Institute since 2003, until the middle of  
17 this year. And I present and teach often at industry events  
18 and for attorneys. I'd say, since 2001, I've taught or  
19 presented over 60 times.

00:02 20 Q. What sorts of cases does Arsenal Consulting typically work  
21 with?

22 A. Primarily civil cases involving corporate litigation. The  
23 types of cases we work on have to do with anything from  
24 document forgery, unauthorized monitoring, evidence spoliation.  
25 But by far, the most popular type of case we work on is

1 intellectual property theft.

2 Q. And do you have experience with criminal cases?

3 A. We do. It's a very small part of what we do, but we have  
4 worked on criminal cases in the past.

5 Q. Prior to coming to Arsenal, did you work anywhere where  
6 you worked with criminal cases?

7 A. Yes. Prior to working for Arsenal, I worked for First  
8 Advantage Litigation Consulting in their Computer Forensics  
9 Division. Similar to Arsenal, very few of our cases involved  
00:03 10 criminal work, but a small number did. Prior to that, I worked  
11 for EvidentData, another computer forensics consulting firm.  
12 Prior to EvidentData, I was employed by the Suffolk County  
13 D.A.'s Office in Boston, Mass.

14 Q. What did you do at the Suffolk County District Attorney's  
15 Office?

16 A. I was responsible for information security and assisting  
17 with computer forensics.

18 Q. Let's turn our attention to this case. When did we retain  
19 your services in this case?

00:03 20 A. January 21, 2010.

21 Q. Could you explain to the jury what you were tasked to do  
22 in January of 2010?

23 A. In January, we were tasked with the review of forensic  
24 images obtained from Tarek Mehanna's home over the course of  
25 2006, 2008, and 2009. Over time, that evolved. We were tasked

1 with analysis related to forensic images obtained in the U.K.  
2 as well as other searches involving internet service providers.

3 Q. Was some of this data in Arabic?

4 A. Yes.

5 Q. How did you work with that?

6 A. Whether it was because of file type or because of search  
7 terms, if we came across Arabic that we thought might be  
8 relevant, we would hand that off to an Arabic translator.

9 Q. Let's begin with the items that came from the Mehanna  
00:04 10 home. Can you just give us a very quick inventory of the  
11 hardware that you looked at that came from the Mehanna home?

12 A. There were three forensic images obtained from Tarek  
13 Mehanna's laptop. Those have been referred to in this case as  
14 Dell 2006, Dell 2008 and Dell 2009. There was also a desktop  
15 computer. There was a floppy disk which came with Dell 2009;  
16 CDs, quite a few CDs. And I believe that's it from the Mehanna  
17 home.

18 Q. Who were the users of the computers or the forensic images  
19 of the computers that you looked at?

00:05 20 A. Dell 2006, Dell 2008, and Dell 2009, which we could also  
21 refer to as the "Mehanna laptop," the users over time were  
22 Ahmed Mehanna, Tarek Mehanna, admin and second account. Those  
23 were user accounts on that computer.

24 MS. PATEL: May I use the ELMO, your Honor?

25 THE COURT: Is it on?

1 MS. PATEL: Not yet.

2 THE COURT: Is it on locally to you?

3 MS. PATEL: Now it is.

4 Q. Okay. I'm sorry. Could you tell me again who were the  
5 users of the Dell 2006, Dell 2008, and Dell 2009 from the  
6 Mehanna home?

7 A. Ahmed Mehanna. It wasn't spelled -- that's correct.

8 Q. Continue.

9 A. Tariq.

00:06 10 Q. T-a-r-i-q?

11 A. Correct. "Mehanna," that's another user name.

12 Q. Okay.

13 A. "Tariq" is one user name.

14 Q. I'm sorry. Yes.

15 A. "Mehanna" is another; "second account," "admin." That's  
16 it.

17 Q. So can you tell by looking at the evidence on Dell 2006,  
18 2008 and 2009, who was sitting at the keyboard when any  
19 particular item comes on the computer?

00:07 20 A. If you're referring to a physical person, then, generally  
21 speaking, no. We call that putting someone in the seat. And  
22 that can be done in particular circumstances, and the ways that  
23 we tend to do that are by using contextual information; for  
24 example, was somebody logged into their Fantasy Football  
25 account at the same time that they're doing something else

1       that's relevant on the computer; witness accounts, that the  
2       person was in front of the computer; sometimes security  
3       systems, we have a video footage of someone walking into a  
4       cubicle or even sitting at a computer.

5           In terms of what user account was associated with  
6       something on the computer, often we can make that connection.  
7       It depends on the particular circumstance.

8       Q.     In this case, was there any video footage?

9       A.     Yes.

00:08 10      Q.     I'm sorry. Video footage of someone sitting at a  
11       computer?

12      A.     Not that I'm aware.

13      Q.     For the Dell computers -- I'm just going to call them the  
14       "Dell computers" if that's okay -- could you explain why  
15       there's a 2006, a 2008 and a 2009?

16      A.     These were forensic images obtained over time during  
17       multiple searches.

18      Q.     To be clear, that's of the same computer, is that right?

19      A.     Correct.

00:08 20      Q.     Could you give us a list of what is -- what broadly is on  
21       that computer?

22      A.     Very broadly speaking, documents, images, music, program  
23       files, videos. Again, that's very broadly speaking, but that's  
24       the type of information on the computers.

25      Q.     Were you here when the government agents from the computer

1 forensics team testified?

2 A. I believe so, yes.

3 Q. And do you remember their descriptions of active and  
4 inactive space?

5 A. To some extent, yes.

6 Q. Could you give us a very brief description of active and  
7 inactive space?

8 A. Active space is also known as allocated space or live  
9 space. Basically, that's where your live files are. All your  
00:09 10 files and folders that you see as a user, they live in active  
11 space.

12 Inactive space is the part of the computer where files  
13 and folders that have been deleted exist, at least for some  
14 time. Also, information that was never intentionally stored by  
15 the operating system or the applications on it can exist in  
16 inactive space.

17 Q. What happens to files in inactive space?

18 A. Over time, files that exist in inactive space, they can be  
19 damaged. Sometimes that damage occurs to the content of the  
00:10 20 files themselves. Sometimes that damage is to the metadata  
21 related to those files. So what I mean by "metadata" is, for  
22 example, the file name of a file. Over time, as you use your  
23 computer, you may still be able to get an image out of your  
24 inactive space, but the file name that was associated with it  
25 may have gone away or vice versa. It could be you can find the

1       file name for something that you deleted and was in inactive  
2       space, but over time, the content was overwritten so you can no  
3       longer get the content back.

4       Q.     Can you tell us what "web browser cache" is?

5       A.     Web folder cache refers to, generally, a file or a folder  
6       where a web browser stores -- quietly stores, because a user is  
7       often unaware, elements of a web page as you view it. In  
8       theory, that speeds up your browsing experience because the  
9       next time you go to that web page, it's going to load some  
00:11 10      components from your computer instead of pulling them across  
11      the internet.

12      Q.     So were you here when I held up the Boston Globe, and I  
13      showed it to the government agents?

14      A.     Yes.

15      Q.     And do you agree with -- I believe it was Special Agent  
16      Swindon, or Scripture, that an image at the bottom of that page  
17      for an article that a user may not have looked at could  
18      automatically be saved to a computer?

19      A.     That's -- the question is a little confusing.

00:12 20      Q.     Okay. Well, let me rephrase it then. Do you agree  
21      when --

22      A.     The user may or may not have looked at the image.

23      Q.     So a user may not have looked at it, but the image could  
24      save in the web browser cache?

25      A.     That's correct.

1 Q. Turning to the Mehanna computers, can you tell us how much  
2 total in gigabytes there was on each of the three forensic  
3 images?

4 A. Dell 2006, Dell 2008, and Dell 2009 had 20 gigabyte hard  
5 drives. That's about 60 gigabytes total.

6 Q. So for a noncomputer savvy person like myself, can you  
7 explain, if we were to print all that out, how much volume are  
8 we talking about?

9 A. There's a study from the University of California,  
00:12 Berkeley, which equates a gigabyte of electronic information  
10 with a pickup truck full of books. That's a very rough analogy  
11 because it really depends on what type of data you're talking  
12 about.  
13

14 So in this scenario, with 60 gigabytes of data, we  
15 would be talking about approximately 60 pickup trucks full of  
16 books.

17 Q. That's just in the Dell 2006, 2008 and 2009 computers?

18 A. That's correct.

19 Q. We also heard prior testimony in the government's case  
00:13 20 that it would be impossible to review all of that data. Do you  
21 agree with that assessment?

22 A. It's theoretically possible for someone to review all of  
23 that information. I would say it's practically impossible. If  
24 you expand the amount of information passed just the Mehanna  
25 laptop in this case to all the electronic information in this

1 case, there's over 700 gigabytes of information just in  
2 forensic images alone. So there's a little bit of math here,  
3 but if -- 700 gigabytes of electronic information is the  
4 equivalent of 70 million pages, which is a rough approximation  
5 and it took someone two minutes to review each page of  
6 information, that would be over 250 years for someone to  
7 actually review every one of those pages.

8 Q. You said approximately 250 years, is that right?

9 A. Again, referring to all of the forensic images in this  
00:14 10 case.

11 Q. What was the earliest date of any file that you found on  
12 the Dell 2006 computer?

13 A. The earliest active file on the Dell 2006 computer was  
14 dated January 2006. The earliest user activity that we  
15 recovered from that machine was January 2005.

16 Q. How could there be activity recorded before there was a  
17 file saved on the computer?

18 A. There was a prior installation of Microsoft Windows on  
19 that laptop. The primary user was one that did not exist in  
00:15 20 the latter or current version of Microsoft Windows, which was  
21 Ahmed Mehanna. And that user activity for that account started  
22 in January of 2005.

23 Q. Are you aware that Ahmed Mehanna is Tarek Mehanna's  
24 father?

25 A. I am.

1 Q. I'd like to use now a chalk that I have shared already  
2 with the government. If we can just talk very briefly about  
3 the images that you looked at of the Dell 2006 computer. Can  
4 you tell us, is this a chart that you're familiar with?

5 A. I am.

6 Q. Can you tell us, from the Dell 2006 computer, how many  
7 government exhibits that were images were introduced as  
8 evidence?

9 A. Okay. Just to be clear here, we're referring to images as  
00:15 10 in pictures that we look at that were on the forensic images of  
11 Dell 2006, 2008 and 2009. So for Dell 2006, there were 158  
12 government exhibits of images or pictures.

13 Q. How many of those 158 came from the inactive part of the  
14 computer?

15 A. 151.

16 Q. And how many of those have thumbnail dimensions?

17 A. 95.

18 Q. Can you tell the jury what thumbnail dimensions are?

19 A. Thumbnails are generally defined as a very small image.  
00:16 20 It typically has dimensions of 200-by-200 pixels or less.  
21 That's just a technical way of saying they're small images.  
22 The vast majority of images found in web folder cache are of  
23 thumbnail dimension size.

24 So when we come across thumbnails, it's interesting to  
25 us in the sense that if we're talking about web folder cache,

1       these are images that have been saved quietly by the browser as  
2 opposed to the user taking any type of overt action to store  
3 them on their computer.

4                  MS. PATEL: May we have Exhibit 72, please? Thank  
5 you.

6                  THE COURT: From the government's computer?

7                  MS. PATEL: I think. Yes, if that would be okay with  
8 you. Thank you.

9                  Q. Do you recognize this exhibit, Mr. Spencer?

00:17 10       A. I do.

11       Q. Can you explain why this -- the bottom part of it looks  
12 grainy like this?

13       A. This image appears to be partially overwritten.

14       Q. What does that mean?

15       A. Some people would -- another term you could use is  
16 "corrupt." Basically, what can happen to an image in inactive  
17 space over time is that part of the content can be overwritten.  
18 You can recover some but not all. So this appears to be an  
19 image where part of the image was recovered from inactive  
00:18 20 space.

21                  MS. PATEL: Can we have Exhibit 121, please?

22       Q. Can you explain why the bottom part of that picture is  
23 gray?

24       A. I would say for the same reason. That appears to be a  
25 partially overwritten image, recovered from inactive space.

1 MS. PATEL: You can take that down. Thank you.

2 Q. Can you explain the significance to us of why those two  
3 documents appear to be incomplete or messed up or corrupted,  
4 whatever word we want to use?

5 A. The significance would be simply that they're not  
6 complete. They're not intact.

7 Q. What does that say about the context of those documents?

8 A. In a vacuum, it just says that those files are incomplete.

9 Q. Can you give us an example from the physical world,  
00:18 10 noncomputers, to how we would be able to interpret those  
11 documents?

12 A. One analogy you might use -- I'm referring to inactive  
13 space in documents or images recovered from inactive space --  
14 might be: If there's a Dumpster behind your apartment and I  
15 walked over that Dumpster and pulled out a photo that was  
16 crumpled and ripped, if, when I pull that photo out and I look  
17 at it, I'm not going to know who took the photo. I may not  
18 know what that photo depicts. I may not know what happened to  
19 it in between when the photo was taken and when it ended up in  
00:19 20 the Dumpster. I may not know who threw it into the Dumpster.

21 The reason I'm, in part, that I'm using that analogy  
22 is because inactive space is also generally associated with the  
23 recycle bin on Microsoft Windows. So that analogy may make  
24 sense.

25 MS. PATEL: Can I have the ELMO again, your Honor,

1 please?

2 Q. Turning our attention to the 2008 forensic image, can you  
3 tell us how many government image exhibits came from the 2008  
4 computer?

5 A. Eight.

6 Q. And how many of those were in inactive space?

7 A. Seven.

8 Q. How many had thumbnail dimensions?

9 A. One.

00:20 10 Q. And, finally, 2009, how many government exhibits came from  
11 -- image exhibits were government exhibits in the 2009  
12 computer?

13 A. Three.

14 Q. And how many of those were from inactive space?

15 A. One.

16 Q. And how many had thumbnail dimensions?

17 A. Three.

18 MS. PATEL: Can we go, please, to Exhibit 779C?

19 Q. There's obviously been a lot of electronic evidence in  
00:20 20 this case. So I'm just going to ask you very few questions  
21 about just a few things.

22 MS. PATEL: 779C. Thank you.

23 Q. Mr. Spencer, do you recognize this document?

24 A. I do.

25 Q. Is this the Sawt al-Jihad document?

1 A. Yes.

2 Q. Did we ask you to do forensic analysis about where this  
3 document came from on the Mehanna computer?

4 A. Yes.

5 Q. And can you tell us -- explain what you did to perform  
6 that analysis?

7 MR. CHAKRAVARTY: Objection, your Honor. Can we be  
8 heard?

9 THE COURT: All right. I'll see you.

00:21 10 (SIDEBAR CONFERENCE AS FOLLOWS:

11 MR. CHAKRAVARTY: Your Honor, obviously, this witness  
12 is a computer forensics expert. The government understands  
13 what they do because we've heard a lot of testimony, and the  
14 government has no objection to allowing the other side to do  
15 this. This seems to be a specific examination or a test that  
16 the witness has done that the government has received no notice  
17 of, no analysis of, no way to confirm or deny any of what the  
18 witness is about to talk about with regards to whatever he's  
19 going to say about this.

00:22 20 The truth is, we don't know what he's going to say  
21 about anything. We've just been given exhibits that he is  
22 going to talk about, but I don't know what he's going to say  
23 about them. It's clear from Miss Patel that this was some type  
24 of specific examination or testing which is designed to --

25 MS. PATEL: Your Honor, these are the government

1 exhibits. Their agents would have done the very same, I would  
2 hope, analysis where on the Dell computer it came from. I'm  
3 just going to ask him where did it come from. Did Mr. Mehanna  
4 ever open it? That's all.

5 MS. BASSIL: We've also told the government on many  
6 occasions this file was never unzipped.

7 MS. PATEL: In fact, I think it's in a pleading.

8 MS. BASSIL: It is in a pleading.

9 MR. CHAKRAVARTY: How do we know that?

00:23 10 MS. BASSIL: We've told you. You've heard it many  
11 times.

12 MS. PATEL: And it's in a filing.

13 MR. CHAKRAVARTY: This witness is going to testify  
14 apparently to the metadata related to this.

15 MS. PATEL: He is going to explain how he figured out  
16 where it was.

17 MR. CHAKRAVARTY: Shouldn't we get the data to be able  
18 to --

19 MS. PATEL: You have four forensic agents that should  
00:23 20 have done that. I mean, I'm not clear. It would be different  
21 if it were a defense exhibit that they've never seen before,  
22 but it's a government exhibit that's been talked about multiple  
23 times now. It's been introduced into evidence. All we're  
24 doing is having the counterpart to the government agent tell us  
25 whether or not -- where it came from on the computer.

1           THE COURT: I don't know that I've seen the -- because  
2 I don't think it's been as much in controversy as some of the  
3 other expert witnesses' disclosure on Spencer.

4           MR. CHAKRAVARTY: It was basically he's going to be a  
5 computer forensic expert.

6           MS. BASSIL: That was the disclosure we got on their  
7 computer forensic people.

8           MR. CHAKRAVARTY: As well as their report?

9           THE COURT: So it was general?

00:24 10          MS. BASSIL: And so was theirs.

11           MR. CHAKRAVARTY: Our disclosure was general, but we  
12 also gave you --

13           MS. BASSIL: Only on the U.K. people.

14           MR. CHAKRAVARTY: That's not true. We gave the  
15 forensic examination reports on the CART specialists as well.  
16 I should add, they didn't testify to a specific analysis of  
17 whether something was opened or not. They said this stuff was  
18 on the computer. This is where it was on the computer.

19           MR. CARNEY: Your Honor, we have told the government  
00:24 20 time and time again that we would be offering this evidence.  
21 This is the only witness that it would be offered through. We  
22 said explicitly, The evidence will show Tarek never opened  
23 this. The government could turn to one of its many forensic  
24 experts and say, Did Tarek ever open this? They may be able to  
25 reach the same conclusion. It was -- please. It was sent to

1 him as a -- it went into his computer, and it just sat there.  
2 It's the equivalent of receiving an envelope that's never  
3 opened.

4 MS. BASSIL: I also objected to this coming in. And  
5 my objection was that there was no evidence it had been  
6 unzipped. You said that goes to the weight of it, not the  
7 admissibility of it. They've had notice from day one.

8 MR. CHAKRAVARTY: There's an affirmative obligation,  
9 if you're going to choose to prove up something, to provide  
00:25 10 notice pursuant to the rules of discovery, as to an examination  
11 was done. The defendants have done nothing for discovery, and  
12 they're able to introduce whatever expert testimony they want.  
13 This is not social science. This is a discrete scientific  
14 process that this witness engaged in.

15 THE COURT: It sounds like the offer is limited, and  
16 I'll allow it.

17 MS. PATEL: Thank you.

18 . . . END OF SIDEBAR CONFERENCE.)

19 Q. Mr. Spencer, can you explain what forensic analysis you  
00:25 20 did on this exhibit?

21 A. We were asked to provide context on this magazine. It's  
22 actually a variety of issues of a magazine. We reviewed the  
23 Kohlmann report, which mentioned that this magazine was found  
24 on Dell 2006. So our contextual analysis basically centered  
25 around: Where did it come from? What happened to it? What

1 user account was it related to on Dell 2006?

2 Q. Can you share with us your findings?

3 A. We found that this -- these issues of Sawt al-Jihad were  
4 all contained within a Microsoft help file. So many issues  
5 were contained within one file. That one Microsoft help file  
6 itself was contained in a compressed file, a RAR file, which I  
7 think has been mentioned earlier in this case.

8 We then performed forensic analysis to identify if  
9 there was any evidence that this -- the issues of this magazine  
00:27 10 had ever been opened or the compressed file that they came in  
11 had ever been opened.

12 I should backtrack a little bit. We found that the  
13 RAR file, the compressed file in which these issues arrived,  
14 they came from an instant message conversation with an Ahmed  
15 Rashad, or Ahmed Rashad, and then were downloaded onto Dell  
16 2006.

17 Our analysis, in terms of what happened to it on Dell  
18 2006, involved both search terms and review of Microsoft  
19 Windows registry entries. Essentially, we were trying to  
00:27 20 identify if it was opened and how many times. Our analysis --

21 Q. Were you able to determine whether this document was ever  
22 opened by the user of Dell 2006, 2008 or 2009?

23 A. We focused specifically on Dell 2006, and we found no  
24 evidence that would suggest that this -- either the issues of  
25 the magazine had been opened or the compressed file itself.

1 Q. Can you give us an example in the physical world of what  
2 that conclusion means?

3 A. Well, assuming somebody was accused of reading this  
4 magazine.

5 MR. CHAKRAVARTY: Objection, your Honor.

6 THE COURT: Overruled. Go ahead.

7 A. Assuming someone was accused of reading this magazine, a  
8 physical analogy might be: If you received a box from someone  
9 you know that had magazines in it, but you didn't open the box.  
00:28 10 You just left it in your driveway, and you were accused of  
11 reading those magazines.

12 MS. PATEL: We're going to turn now, your Honor, just  
13 for the witness, to Exhibit 1278. This has not yet been  
14 admitted into evidence.

15 THE COURT: Is this in your computer?

16 MS. PATEL: Yes. We are -- we're just using Mr.  
17 Spencer here as a reader for just the next two exhibits.

18 MR. CHAKRAVARTY: Your Honor, this witness is an  
19 expert witness on computer forensics. The next two witnesses  
00:29 20 [sic] appear to be outside of his expertise or lane.

21 MS. PATEL: The government had many readers that  
22 didn't have expert --

23 (SIDEBAR CONFERENCE AS FOLLOWS:

24 THE COURT: Let me see you at the side.

25 MS. PATEL: Those were recovered by the government,

1       Customs and Border Patrol, documents given to us in discovery.  
2       And we're simply using -- because Mr. Tabbara was not allowed  
3       to testify, we're just using him as a reader. He's not going  
4       to say anything other than just reading, like the government  
5       agents did.

6                  THE COURT: Well -- okay.

7                  MR. CHAKRAVARTY: First is the authentication issue,  
8       which --

9                  THE COURT: That is the first issue. We saw this  
00:30 10      through somebody else, and it was not admitted, if I recall.

11                 MS. BASSIL: I don't think so.

12                 THE COURT: No?

13                 MR. CHAKRAVARTY: I'm not sure. I don't think so.

14                 THE COURT: Some Saudi document I thought -- anyway,  
15      that doesn't matter. Somebody's got to say what it is. I  
16      don't know that he can say what it is.

17                 MS. PATEL: He can't say what it is, but we would say  
18      that given it came from Customs and Border Patrol that -- it  
19      was authenticated by the government, government's case in  
00:30 20      chief, when they had all the agents come up and testify that  
21      they retrieved documents from Mr. Mehanna when they arrested  
22      him at the airport.

23                 MS. BASSIL: He can read "General Employment  
24      Contract."

25                 THE COURT: That may authenticate it as a thing that

1       they got from him. It didn't necessarily authenticate it as a  
2 general employment contract.

3           MS. BASSIL: We can call Mr. Chakravarty to the stand  
4 because he's the one who sent it to us as his employment  
5 contract from Saudi Arabia.

6           MS. PATEL: I would be delighted to do that.

7           THE COURT: I think -- somebody has to say what it is.

8           MR. CARNEY: May I be heard briefly? When Mr. Mehanna  
9 was arrested, things were seized from him.

00:31 10           THE COURT: Right.

11           MR. CARNEY: Throughout this trial, the Court has  
12 ruled that if things are, for example, on his computer, it's  
13 relevant.

14           THE COURT: Right.

15           MR. CARNEY: The government has presented evidence  
16 about where the defendant was going: to Saudi Arabia. And  
17 there have been illusions, for example, even with Kohlmann,  
18 about Saudi Arabia, and through the civilian witnesses, that  
19 Tarek was going to get a job to work there. So that if he has  
00:31 20 this document in his possession, it's authenticated as the  
21 document he has.

22           THE COURT: Well, as an object, that might be true.  
23 But you want it for more than its objectness. You want it for  
24 its meaning. In order to have meaning, it has to be a  
25 particular kind of object, the contents of which have meaning

1 for the point you want to make, which is that he had a job  
2 offer.

3 MR. CARNEY: I think this is an exception to the  
4 hearsay rule in that it is a document --

5 THE COURT: We're not at hearsay yet. In other words,  
6 it has to be -- if the question is what things were taken from  
7 him in the search, you could identify it as a thing that was  
8 taken in the search, just like his handkerchief. If you want  
9 to give some more meaning to it that it proves not just that  
00:32 10 something was taken from him but that he had a job prospect,  
11 then the job prospect piece of the evidence has to emerge from  
12 the acceptance of a description of this as more than just  
13 something taken from him. It has its own independence as a  
14 contract, so on and so forth. That would be missing.

15 MR. CARNEY: As an except to the hearsay, a contract  
16 has independent significance as a contract document.

17 THE COURT: We don't even know it's a contract. It  
18 says so. But it's not a self-authenticating document.

19 MR. CARNEY: Well, I disagree. If it says "contract"  
00:33 20 and it has -- it is full with language consistent with a  
21 contract, and it is signed by a person who's material to this  
22 case, I submit that in this circumstance it comes in as an  
23 independent document found with the defendant. Any deficiency  
24 that the government brings up would go to the weight, not the  
25 admissibility of this.

1                   Look at all the documents your Honor admitted simply  
2 because they were in the possession of the defendant: books  
3 that were on the shelf. There was no evidence that he read  
4 them or no evidence that he had gone through them or anything  
5 other than this was in his possession; this was in his  
6 possession.

7                   THE COURT: Well, I'm just reviewing Rule 902, which  
8 is the rule regarding self-authentication. I don't think this  
9 falls within any of those. It would be subject to Rule 901,  
00:34 10 which is there has to be evidence sufficient to show it is what  
11 it claims to be. And I don't think we have that.

12                   MR. CARNEY: We would have been able to authenticate  
13 this with the witness who was the person who hired him from  
14 University.

15                   And I guess this is the other thing that I have to  
16 bring up. In a trial where the Court has let in hundreds and  
17 hundreds of exhibits because they were connected to the  
18 defendant, they were either someplace on his hard drive,  
19 someplace in his bedroom, et cetera, this is a situation where  
00:35 20 the government knows the defendant was hired to work at this  
21 hospital. They arrested him because they knew he was on his  
22 way to go to work there. They interviewed his parents. They  
23 knew he was going on his way to work there. That's the  
24 contract he had in his possession, going to this place to work.

25                   There is a final exception to the hearsay rules that

1       says, in order for the defendant to be able to present his  
2       case, he can't be prevented from offering evidence which the  
3       government knows is an authentic document. You know, it is so  
4       unfair -- and I don't say this lightly. It is so unfair when  
5       someone is facing the prospect of spending life in prison and  
6       the government knows this document is authentic and they seized  
7       it and they know why it's being offered, to raise a  
8       hypertechnical objection like this goes to the very heart of  
9       whether the government is interested in the defendant having a  
00:36 10      fair trial.

11            MR. CHAKRAVARTY: If I may respond to that. The  
12       government is not objecting to it as purely unauthentication,  
13       as a technicality. The issue is that if this were central to  
14       the defense theory of the case, then you would think that this  
15       would have been one of the exhibits, that the defense would  
16       have notified us of before trial. It wasn't. In fact, it was  
17       notified to us for the first time last night.

18            To suggest that, if this was a central aspect of the  
19       case aside from noticing the witnesses, this would have been  
00:36 20       notified earlier so that the witnesses, the CBP witnesses who  
21       may have had interactions with him at the time of his arrest,  
22       would have been able to further authenticate and say this is  
23       something we obtained from him.

24            The government is waiving -- as we have throughout the  
25       case, we are waiving those hypertechnical authentication issues

1       with regard to chain of custody and bringing things in, all of  
2       which we spent over a week of jury time establishing -- because  
3       there were no stipulations.

4               At this stage, the concern now is that without any  
5       authentication witness, without anyone to say what this is,  
6       where it was found, anything else, the jury is going to get the  
7       misapprehension that this is somehow important. I understand  
8       that the defense may feel it is important for some reason. The  
9       government has not alleged that the defendant was trying to  
00:37 10      flee the United States to go to Saudi Arabia. And that's what  
11      the purpose of this --

12               MS. BASSIL: Why did you --

13               THE COURT: One at a time.

14               MR. CHAKRAVARTY: That is an inference which I think  
15       the defense is understandably mindful of that they don't want  
16       the jury to have, and so they're trying to preempt it. But  
17       that's where I think that both notice and establishing the  
18       authenticity of this matters. It's not an empty technicality.  
19       The government --

00:38 20               MR. CARNEY: You know --

21               MR. CHAKRAVARTY: If this is something your Honor  
22       fully feels is relevant and overcomes the 403 barriers, the  
23       government is prepared to stipulate to the fact that when the  
24       defendant was leaving for Saudi Arabia that he had a job offer  
25       from Saudi Arabia.

1 MS. BASSIL: So --

2 MR. CHAKRAVARTY: Further evidence both that --

3 THE COURT: If you're willing to go that far, what's  
4 the problem with the exhibit?

5 MR. CHAKRAVARTY: First, it's confusing. It's not  
6 clear where it is from. And it suggests that, if he had a job  
7 and these were the terms of the job and the lucrative aspect of  
8 the job and these details, that somehow there was an offer,  
9 acceptance, all the rest.

00:38 10 MR. CARNEY: But the point is: You know it's true.  
11 You gave this document to us. You know exactly what it is.

12 THE COURT: What's the significance of it to the  
13 defense?

14 MR. CARNEY: Because --

15 THE COURT: Other than to counter the flight -- no pun  
16 intended -- the fleeing from prosecution argument?

17 MS. BASSIL: The government also asked Mr. Kohlmann --  
18 they sort of asked him about extradition treaties for Saudi  
19 Arabia.

00:39 20 MR. CARNEY: That was excluded.

21 MS. BASSIL: It was clearly an implication that he was  
22 going for a wrong reason when they knew otherwise. They did.

23 THE COURT: That seems -- I guess it seems a small  
24 point on both sides.

25 MR. CARNEY: Well, it's important to the defense, that

1 he had this in his pocket, saying good-bye to his parents,  
2 heading over to Saudi Arabia for this job. In fact, at earlier  
3 hearings, on bail, I believe this document was proffered during  
4 a bail hearing to illustrate that this is where he was going.

5 And so, you know, the number of times we've got, as  
6 late as 10:00 at night, a list of three dozen exhibits that are  
7 going to be coming in through a witness the following day has  
8 occurred over and over. But you haven't heard us squealing  
9 about it.

00:40 10 MR. CHAKRAVARTY: That was a very different scenario.  
11 Those are exhibits which we have previously notified you we --

12 MR. CARNEY: We had them. We knew them.

13 MR. CHAKRAVARTY: It's a brand-new exhibit. This kind  
14 of negotiation could have happened earlier. The government  
15 concern is, if this comes in or if the stipulation comes in,  
16 then the fact that we wouldn't be able to repatriate the  
17 defendant becomes relevant. That's why I asked that question  
18 of Mr. Kohlmann, which your Honor wouldn't allow.

19 Then I would ask that, if the exhibit comes in or if  
00:40 20 the defense accepts our stipulation to the fact that he was  
21 going to Saudi Arabia, then we should also be able to take  
22 judicial order that there is no extradition treaty from Saudi  
23 Arabia.

24 THE COURT: Well, all of that goes to whether -- to a  
25 potential reason why he was arrested when he was arrested, as

1 opposed to before, which is also not particularly relevant for  
2 the jury. So the whole controversy is more or less besides the  
3 point, I guess.

4 The problem is, that with all offer and counteroffer  
5 and stipulation and so on, we're spending a lot of time  
6 distracting the jury -- that's why -- I don't know what --

7 MS. PATEL: Keep in mind, your Honor, also, that the  
8 government will certainly argue that Mr. Abousamra fled to  
9 Syria. I'm certain they will. And that's why this Saudi  
00:41 10 Arabia issue is very important for state of mind.

11 MR. CARNEY: I have a compromise. I'd ask that this  
12 document be admitted as a document found in the defendant's  
13 pocket when he was getting on a plane to Saudi Arabia because  
14 it goes to his state of mind. This document may not actually  
15 be true, but he's carrying a document that seems to indicate to  
16 him that he has a job waiting for him in Saudi Arabia. So  
17 let's add it to state-of-mind evidence because a person  
18 carrying this document would rightfully believe he's going to  
19 be working.

00:42 20 MR. CHAKRAVARTY: State of mind that he's going to  
21 Saudi Arabia, if that is relevant then --

22 MR. CARNEY: It is.

23 MR. CHAKRAVARTY: -- then we should be able to  
24 introduce the fact that there's no extradition treaty.

25 THE COURT: I'll tell you what. I'll admit the

1 documents without having them read to the jury. I just don't  
2 think we need to emphasize them to that degree.

3 MR. CARNEY: Thank you.

4 . . . END OF SIDEBAR CONFERENCE.)

5 THE COURT: Okay.

6 MS. PATEL: Okay. We can -- I believe we're going to  
7 take this -- may I question him on this, your Honor?

8 THE COURT: I don't know that there's anything he can  
9 say about it.

00:43 10 MS. PATEL: Okay. So we can take it down.

11 THE COURT: We'll admit, pursuant to our discussion at  
12 the sidebar, 1278 and 1279.

13 MS. PATEL: Yes.

14 (Exhibit Nos. 1278-1279 received into evidence.)

15 Q. Mr. Spencer, do you remember hearing testimony in the  
16 government's case about encryption programs that Mr. Mehanna  
17 may or may not have had on his computer?

18 A. Yes.

19 Q. I want to ask you some questions about some of those. Are  
00:43 20 you familiar with a program called TOR, T-O-R?

21 A. I am.

22 Q. Can you tell us what that is?

23 A. TOR is an onion-routing application and system. Its  
24 purpose is to increase the privacy and the security of an  
25 internet-connected user.

1 Q. Is this program free or can you buy it?

2 A. It's open source so it's freely available.

3 Q. Do you agree, when Special Agent Scripture testified, that  
4 that program was not illegal?

5 A. I agree.

6 Q. And are you aware of any FBI report or testimony that  
7 mentions whether the program was ever actually used on the  
8 Mehanna computer?

9 A. No.

00:44 10 Q. Are you familiar with Privoxy, P-r-i-v-o-x-y?

11 A. I am.

12 Q. Can you tell us what that is?

13 A. Privoxy is a noncaching web proxy. Basically, it sits  
14 between the internet and your web browser. It filters out  
15 stuff. What people tend to use Privoxy for is scrubbing ads.  
16 Let's say you're browsing your favorite newspaper's website.  
17 Privoxy will sit in the middle of that website and your  
18 computer, one of the things it will do is scrub out all the ads  
19 so you don't see them. It's often installed with TOR.

00:45 20 Q. Is that either free or for sale?

21 A. It's freely available.

22 Q. Are you aware of any FBI testimony that talks about  
23 whether Privoxy was ever actually used on the Mehanna laptop?

24 A. No.

25 MR. CHAKRAVARTY: Objection, your Honor.

1                   THE COURT: It may stand.

2 Q. Are you familiar with a program called Window Washer?

3 A. I am.

4 Q. Can you explain what that is?

5 A. Window Washer is a commercial product of Webroot Software.

6 Its purpose is to clean up a Windows computer. So it has the  
7 capability of deleting both files and Windows information.

8 Q. Is that free or something people can buy?

9 A. It's a commercial product. You could buy it.

00:45 10 Q. Are you aware of whether that program was ever used on the  
11 Mehanna laptop?

12 A. I'm aware that it was installed.

13 Q. Okay. Are you familiar with Trillian?

14 A. Yes.

15 Q. What's that?

16 A. Trillian is an ad-supported instant messaging client.

17 Basically, it allows you -- say, you have four or five  
18 different accounts on different instant messaging services.

19 You could combine them all into your Trillian chat client. The  
00:46 20 most common version is ad-supported so it's freely available.

21 There's also a professional version you can buy.

22 Q. Do you know whether that program was used on the Mehanna  
23 computer?

24 A. Yes.

25 Q. You were present in the courtroom when Special Agents

1       Swindon and Scripture of the FBI testified, is that right?

2       A.     Yes.

3       Q.     Do you remember that it was the CART team Agent Swindon  
4            who acquired and processed the data in this case, not all of  
5            it, I guess, but the Dell computer anyway?

6       A.     I believe that's so, yes.

7       Q.     Do you recall that Special Agent Scripture said he further  
8            processed the data?

9       A.     Yes.

00:47 10      Q.     Do you remember the agents who then analyzed the data?

11     A.     My understanding is Special Agents Daly and Williams.

12     Q.     Do you know whether they have any forensic computer  
13        training?

14                  MR. CHAKRAVARTY: Objection, your Honor.

15                  THE COURT: Sustained.

16     Q.     Do you think that computer forensics training is important  
17        to assessing electronic evidence?

18                  MR. CHAKRAVARTY: Objection, your Honor.

19                  THE COURT: Overruled. He may answer that.

00:47 20     A.     The issue is a little bit more complicated. Essentially,  
21            electronic evidence has context, just like physical evidence in  
22            the real world that you might come across. So the context is  
23            basically the story of a piece of electronic evidence.

24                  So if we use a photo as an example, if you have a  
25            photo and you've pulled it out of, let's say, a trash Dumpster

1 or on a computer inactive space. You know it came from that  
2 Dumpster or the inactive space on that computer. But if you  
3 are in a vacuum and you don't have the further story on that  
4 electronic evidence, you won't know where it came from.  
5 Potentially, you may not know what it depicts. You may not  
6 what user account is associated with it. You may not know what  
7 happened to it on that computer, which could include how did it  
8 end up in inactive space. These are just some of the questions  
9 that you may have about that piece of electronic evidence if  
00:48 10 that context is not provided to you.

11 So maybe to more succinctly answer that question, the  
12 computer forensics expertise is important to develop that  
13 context.

14 Q. Now, we've seen lots of images so far as exhibits. In  
15 addition to what we have already seen, were there other  
16 thumbnail images on the Dell 2006, 2008 and 2009 computers?

17 A. Yes.

18 MS. PATEL: Can we please have Exhibit 1151 from Mr.  
19 Oh?

00:49 20 MR. CHAKRAVARTY: Your Honor, the government's  
21 objection to the next several exhibits is relevance.

22 MS. PATEL: Your Honor, as we've previously heard, if  
23 it's on Mr. Mehanna's computer, it's relevant because it goes  
24 to his state of mind. It was there. These images --

25 THE COURT: I'll see you at the side briefly. I don't

1 think this will take long.

2 (SIDEBAR CONFERENCE AS FOLLOWS:

3 THE COURT: The list goes through 1177 or something?

4 MS. PATEL: We're just going to go one second each  
5 picture.

6 THE COURT: What are they?

7 MS. PATEL: They are other thumbnail images that lived  
8 in the same place as the government's 160 or so exhibits.

9 THE COURT: Content-wise, what are they?

00:49 10 MS. PATEL: They are not 9/11 and Osama bin Laden.

11 MR. CHAKRAVARTY: Sports heros, sports players,  
12 Shakira.

13 THE COURT: What's the point?

14 MS. PATEL: That goes to state of mind. There's been  
15 a lot of evidence in this case that's all Mr. Mehanna ever  
16 looked at or did, that he downloaded these hundreds of  
17 pictures. The jury had no context about what else is on the  
18 computer. It's a very small part that the government has  
19 showed them. We think it's important that the computer -- that  
00:50 20 that's not all he did.

21 THE COURT: All right.

22 MR. CHAKRAVARTY: No criminal, that's all they did is  
23 the crime.

24 THE COURT: You can argue that. I'll -- I'll allow  
25 them.

1 . . . END OF SIDEBAR CONFERENCE.)

2 MS. PATEL: May I have Exhibit 1151?

3 THE COURT: All right. So pursuant to the ruling,  
4 we'll admit 1151 through, I think, 1177.

5 MS. PATEL: That's correct.

6 (Exhibit Nos. 1151-1177 received into evidence.)

7 THE COURT: Now we can, just for the record --

8 MS. PATEL: May the jury have it, also, your Honor?

9 Q. Mr. Spencer, do you recognize this image?

00:51 10 A. I do.

11 Q. Where did you recover this image?

12 A. This image was recovered or carved from inactive space on  
13 Dell 2006.

14 MS. PATEL: Can we have 1152?

15 Q. Can you explain why -- I'm sorry. This image, also, where  
16 was this recovered from?

17 A. Inactive space on Dell 2006.

18 Q. Why is it so small?

19 A. This image has thumbnail dimensions.

00:51 20 Q. 1153, where was this recovered?

21 A. Again, inactive space on Dell 2006.

22 Q. 1154, where was this recovered?

23 A. Inactive space, Dell 2006.

24 Q. 1155, where was this recovered?

25 A. Inactive space, Dell 2006.

1 Q. 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164,  
2 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174,  
3 1175, 1176, 1177, were images 1151 through 1177 all from  
4 unallocated or deleted space?

5 A. On Dell 2006, yes.

6 MS. PATEL: No more questions, your Honor.

7 CROSS-EXAMINATION BY MR. CHAKRAVARTY:

8 Q. Mr. Spencer, there were a number of images on that Dell  
9 2006 computer. The ones we just went through are some of these  
00:53 10 images in the inactive space, correct?

11 A. That's correct.

12 Q. But there are, in fact, hundreds, if not thousands, of  
13 images within that inactive space, right?

14 A. That's correct.

15 Q. That's space that's unallocated by the file registry of  
16 the computer, meaning it's not using that space so some data  
17 that had been previously in active space is now in the rubbish  
18 bin, as you described earlier?

19 A. That's correct, with one caveat, which is, there's also  
00:53 20 data which was never stored in active space. We refer to that  
21 as data which has never intentionally been stored. That can  
22 also end up in inactive space.

23 Q. Is there any indication that that occurred in this case?

24 A. You can't ascertain -- if you recover an image without  
25 context from inactive space, the likelihood is that those

1 images existed in some way in the active space. But without  
2 being able to identify exactly where they came from, you can't  
3 rule out that they may have come from, for example, the memory  
4 on the computer.

5 Q. All right. The bottom line is, inactive space, this  
6 distinction that the defense has asked you to draw, that's on  
7 the computer; it's data that has been on the computer and was  
8 on the computer when you looked at it?

9 A. That's correct.

00:54 10 Q. It's how it got onto the computer that you can't draw very  
11 many conclusions about with regards to materials that are in  
12 inactive space, right?

13 A. Generally speaking, that's correct.

14 MR. CHAKRAVARTY: Miss Patel, can I look at the chalk  
15 that you used? Your Honor, may I have the ELMO, please?

16 Q. This is the chalk that Miss Patel put up for you. Did you  
17 prepare this?

18 A. No.

19 Q. But you've confirmed these numbers?

00:55 20 A. Yes.

21 Q. Let's first clarify that this is only talking about  
22 images, which we're talking about the little thumbnails like of  
23 Shakira and the Danica Patrick and the other people we just  
24 looked at. You're talking about those images. That's the only  
25 thing that you quantified on this chart, correct?

1 A. That's correct.

2 Q. So if there were 158 government exhibits, you're only  
3 talking about the images that were considered, which have been  
4 introduced as government exhibits, correct?

5 A. Right. That's what this chart reflects.

6 Q. This doesn't include all the videos?

7 A. No.

8 Q. Those were actually in active space, weren't they?

9 A. If I recall correctly, the majority of them were, yes.

00:56 10 Q. And he had a "My Videos" folder on his computer; do you  
11 remember that?

12 A. That's correct.

13 Q. He had different video -- he had a folder that he  
14 specifically named "Iraq" and "Afghanistan"; do you remember  
15 that?

16 A. I believe that's correct.

17 Q. And he had another folder called "My Work"; do you  
18 remember that?

19 A. I do, yes.

00:56 20 Q. And then "Translations" was another portion of his hard  
21 drive?

22 A. Yes.

23 Q. A folder that he created?

24 Did you also see the folder that said "39 Ways"?

25 A. I believe so, yes.

1 Q. So all of his videos and translation information, that was  
2 in active space, correct?

3 A. For the most part, yes.

4 Q. And I think there was also some Nasheeds that go along  
5 with that? MP3 files I should add?

6 A. Yes.

7 Q. And then the instant message chats that have been captured  
8 through the Trillian program, those were also in active space,  
9 weren't they?

00:57 10 A. I believe so. All the Trillian chats that were offered as  
11 exhibits were active files, yes.

12 Q. So the only thing you're talking about here in this chart  
13 is these little thumbnails or other pictures, images, that were  
14 on the computer that I think we've shown many of them to the  
15 jury just by quickly clicking through them, is that right?

16 A. That's correct. This also includes larger images than  
17 thumbnails, but it does reflect images specifically.

18 Q. For example, when the defendant went to Ground Zero, there  
19 was a picture of him holding his finger up, that was also on  
00:57 20 the computer. You didn't consider that -- that's not a  
21 thumbnail, correct?

22 A. That's not a thumbnail.

23 Q. But it was on the computer?

24 A. Correct.

25 Q. With regards to the images that you -- the government has

1 introduced that were -- let's use the 95 number from the 2006  
2 computer. This is -- amongst these 95 images are the images  
3 of, you know, over 30 pictures of September 11th, correct?

4 A. I think you're referring to 30 images of the World Trade  
5 Center.

6 Q. World Trade Center, I'm sorry, being struck on September  
7 11th.

8 A. Yes.

9 Q. There were over a dozen pictures of Osama bin Laden?

00:58 10 A. That sounds accurate, yes.

11 Q. And several pictures of Abu Musab al-Zarqawi and other  
12 mujahideen?

13 A. Yes.

14 Q. And those were thumbnails or other smaller images in the  
15 inactive space, correct?

16 A. Correct.

17 Q. I think one of them you were pointing out today was Doctor  
18 Ayman al-Zawahiri, the leader of al Qa'ida, correct?

19 A. I'm not familiar with the content of that photo.

00:58 20 Q. -- who he is.

21 But there was an individual, and part of it was kind  
22 of, as I think you called, overwritten?

23 A. Yes.

24 Q. In terms of your explanation for why something is a  
25 thumbnail, I think Miss Patel asked you whether this is data

1       that typically is put onto a computer as somebody is surfing  
2       the internet, and there's something on the screen, and it gets  
3       passively downloaded onto the computer through the web browser,  
4       is that accurate?

5       A.     Essentially, yes.

6       Q.     So in that scenario, somebody would have to surf to that  
7       website where this image is contained. It appears somewhere on  
8       the website. If I went to the boston.com website, there are a  
9       number of images. In order for me to see them on my computer,  
00:59 10      they have to be downloaded passively to my computer, correct?

11      A.     Correct.

12      Q.     But I navigated to boston.com. That was something I had  
13       either clicked on or I put that into the navigation bar?

14      A.     Correct. There's a minor caveat, which is often  
15       associated with malware, which would be, say, pop-ups. But,  
16       generally speaking, yes, you need to navigate to a web page to  
17       have remnants from that web page on your computer.

18      Q.     You didn't find any malware on this computer, did you?

19      A.     We found malware. However, we didn't find malware that we  
01:00 20       would consider serious or relevant.

21      Q.     That wasn't the way that all this information got onto the  
22       computer, correct?

23      A.     No.

24      Q.     To draw the distinction between how something passively  
25       gets put onto the computer because you surf to a web page, in

1 other circumstances, the user can actually click on an image or  
2 a video or something else on the internet and actively download  
3 it using the browser?

4 A. That's correct.

5 Q. Browsers have logs of what has been downloaded, correct?

6 A. Yes.

7 Q. Well, let's talk about specifically. The 2006 hard drive  
8 that the defendant had, he had used Mozilla Firefox to download  
9 several files, isn't that correct?

01:01 10 A. That's correct.

11 Q. They included files like the Jihad videos?

12 A. Correct.

13 Q. And there was a file called "Irhaby 007"; do you remember  
14 that?

15 A. That specific file name, I do not. But I'm familiar with  
16 the log file.

17 Q. There were bin Laden speeches and copies of the Umar  
18 Hadeed video and the wayakoon.doc, different versions of 39  
19 Ways. And there were also files downloaded from the Al-Ekhlaas  
01:01 20 website. Does that sound familiar?

21 A. The Al-Ekhlaas entries, I don't recall. If you have  
22 that --

23 MR. CHAKRAVARTY: Can we just call up Exhibit 793,  
24 please?

25 MS. PATEL: Your Honor, I object. Can I be heard?

1                 THE COURT: All right. I'll see you at the side.

2                 (SIDEBAR CONFERENCE AS FOLLOWS:

3                 MS. PATEL: In the interests of the Court's time and  
4 efficiency, I have narrowly tailored the direct to just images.  
5 That's why that chalk says, "Image Statistics." I think this  
6 is well outside the scope of direct, going to the inventory of  
7 all the government exhibits. The witness only testified about  
8 images. We didn't go into the video stuff. We're not  
9 disputing it's on the computer, but I don't see why we have to  
01:02 10 belabor, Mr. Chakravarty's favorite word, the point.

11                 MR. CHAKRAVARTY: I'm not going to belabor it but --

12                 THE COURT: Belaboring is in the eye of the beholder.

13                 MR. CHAKRAVARTY: The one doing the laboring.

14                 He's an expert. He's looked at the materials. I have  
15 the right to cross-examine as they have the right to  
16 cross-examine ours.

17                 THE COURT: There may come a point that's too far, but  
18 we're not there yet.

19                 MR. CHAKRAVARTY: And I don't mean to --

01:02 20 . . . END OF SIDEBAR CONFERENCE.)

21 Q. Mr. Spencer, this is Exhibit 793. Do you recognize this  
22 as the downloads.rdf file from the Firefox browser from the  
23 defendant's computer in 2006?

24 A. Yes, I recognize this.

25 Q. An it's 37 pages long, and it lists the date and time and

1       the file name and the path of the files that the defendant  
2       downloaded, correct?

3       A.     Yes.

4       Q.     Now, I wanted to clarify one other thing from --

5                    MR. CHAKRAVARTY: If I can have the ELMO again.

6       Q.     You cited to these users. In fact, for the 2006 -- she  
7       asked you about the 2006, 2008, 2009, because they were the  
8       same computer presumably, about who were the listed users  
9       according to the forensic data. But, in fact, for the 2006  
01:04 10      computer, isn't it true that the only user in the system  
11     registry was Tariq?

12      A.     That was the one active user account. The inactive user  
13     account was the Ahmed Mehanna.

14      Q.     That was the account that the -- Mehanna was the original  
15     name on the initial Windows installation that was replaced in  
16     January of 2006?

17      A.     That's correct.

18      Q.     So after January of 2006, there was one user on that  
19     account, correct?

01:04 20      A.     One user account, that's correct.

21      Q.     So these -- all these other accounts, these are from the  
22     2008 and 2009 versions of the computer, the hard drive?

23      A.     Yes.

24      Q.     And the hard drive was actually substantially different in  
25     2008 and 2009 than it appeared in 2006; is that fair to say?

1 A. Yes.

2 Q. All of those Jihad videos were gone? Did you see any on  
3 the 2008, 2009 hard drive?

4 A. Not that I recall.

5 Q. And the Trillian program didn't capture his instant  
6 message chats anymore; do you recall that?

7 A. I don't recall seeing Trillian chats.

8 Q. You were asked about some of the security software that  
9 was on the defendant's computer. Do you recall one of them was  
01:05 10 TOR, the onion router program that you mentioned?

11 A. Yes.

12 Q. Do you recall the instant message chats where the  
13 defendant describes how to use the onion router?

14 A. I'm familiar with those chats in a broad sense. In terms  
15 of our forensics analysis, we didn't read through all the  
16 content of the chats. We would identify them and then provide  
17 them to counsel.

18 Q. Okay. So you relied on counsel to ask you to do specific  
19 tasking with regard to what forensic processes to do on the  
01:06 20 computer?

21 A. Yes.

22 Q. You used an example, the examination of the Sawt al-Jihad  
23 compendium of the magazines. That was something counsel asked  
24 you to do?

25 A. That's correct.

1 Q. You described earlier how context is important to  
2 determine whether something is used, whether -- how something  
3 got onto the computer. So that you would agree with me that if  
4 those chats actually described the defendant using the TOR  
5 program and telling other people how to use the TOR program,  
6 that would be relevant to your determination as to whether he  
7 did, in fact, use the TOR program?

8 A. Yes.

9 Q. And the same goes for Privoxy; is that fair to say?

01:06 10 A. Yes.

11 Q. And Privoxy and TOR also allow users anonymity on the  
12 internet; is that fair to say?

13 A. That's correct.

14 Q. Now, Mr. Spencer just a little bit about your background.  
15 You haven't been in law enforcement except for your time at the  
16 Suffolk D.A.'s Office, is that correct?

17 A. That's correct.

18 Q. Did you also intern at one point for Mr. Swindon?

19 A. No.

01:07 20 Q. You never interned for him? Do you know the government's  
21 computer experts?

22 A. I'm familiar with them, yes.

23 Q. How big is your company? How many people?

24 A. We have two full-time employees.

25 Q. So you did the predominant computer forensic analysis in

1 this case?

2 A. Actually, no. We have -- we also have part-time  
3 employees. We had, at any one time, up to four employees  
4 working on this project, this case. Over time, we had five  
5 employees who were subject to the protective order.

6 Q. And so did those people -- do those people have the same  
7 credentials as you?

8 A. No.

9 Q. So did you personally do the forensic analysis here, or  
01:08 10 did you ask your employees to do that?

11 A. We all performed forensic analysis.

12 Q. Well, specifically with regard to the 2006 hard drive, did  
13 you examine that hard drive?

14 A. I examined parts of that hard drive, yes.

15 Q. So you're testifying as a witness to kind of describe what  
16 your entire company did, not what you personally did?

17 A. A mixture.

18 Q. Was your work or your company's work -- was it  
19 peer-reviewed? Did anybody check it or examine it?

01:09 20 MS. PATEL: Objection, your Honor.

21 THE COURT: Sustained.

22 Q. What types of procedures do you employ to ensure that  
23 you're conducting appropriate work?

24 A. We use -- we follow methodology that we've used in the  
25 past. When they exist, we use industry best practices. We

1 have multiple tools that do very similar things. So if we find  
2 -- if there's documents or data that is particularly relevant  
3 in some way, we'll use a variety of tools to confirm a finding.

4 Q. Did you do that in this case?

5 A. Yes.

6 Q. What did you use?

7 A. What did we use in terms of tools?

8 Q. Yeah, tools to verify what your results were.

9 A. AccessData Forensic Toolkit, Guidance Software EnCase,  
01:10 10 Digital Detective's NetAnalysis, CacheBack, PhotoRec.

11 Q. PhotoRec?

12 A. P-h-o-t-o-R-e-c.

13 THE COURT: As long as you're spelling, CacheBack is  
14 C-a-c-h-e?

15 THE WITNESS: Correct.

16 A. Adroit, A-d-r-o-i-t. There may be others.

17 Q. Why did you use all those different systems? Did you not  
18 trust your results?

19 A. In terms of priority, triage, we consider this case to be  
01:10 20 one of our most important. So there really was no particular  
21 issue of do we trust a tool or not. It was more an issue of we  
22 need to essentially analyze aggressively all the information on  
23 this case that we've been asked to. So we would use different  
24 tools to do different things; but in some cases, we would use  
25 different tools to do the same thing.

1 Q. Some of those tools are the same that you heard that the  
2 government experts use in their regular procedures?

3 A. Yes.

4 Q. In fact, in this case, they used Forensic Toolkit for most  
5 of this analysis, correct?

6 A. As far as I know, yes.

7 Q. So you mentioned your company took this very seriously,  
8 your role in this case, and we appreciate that. How much did  
9 you get paid?

01:11 10 A. We've billed over a thousand hours on this case, which  
11 will be approximately \$325,000.

12 Q. All for your testimony this morning?

13 A. I would not characterize it that way.

14 MR. CHAKRAVARTY: Thank you.

15 THE COURT: Miss Patel?

16 REDIRECT EXAMINATION BY MS. PATEL:

17 Q. Why did you bill a thousand hours to this case, Mr.  
18 Spencer? Can you please explain?

19 A. There's a couple issues which I -- a couple primary  
20 issues. One would just be the vast volume of electronic data.

21 In terms of forensic images alone, there's 19 forensic images

22 of hard drives that we received on this case; 35 forensic

23 images of other types of electronic media, CDs, thumb drives,

24 et cetera. There's a third pool of data, which we would call

25 the results from other searches, meaning outside of the Mehanna

1 home and outside of the U.K., there's other searches that were  
2 performed, and that information was given to us for review.  
3 There's also work product that we received from counsel. I  
4 believe that was the FBI's work product for the most part.  
5 There's also a fifth category, which would be reports from  
6 other experts that we were asked to review and confirm  
7 findings.

8 Q. Is it fair to say there's a lot of evidence in this case?

9 A. I think that's fair to say. The 700 gigabytes of  
01:13 10 information I mentioned before is related to the forensic  
11 images alone. That doesn't take into account the other data,  
12 the other pools of data I just mentioned.

13 We also -- the second issue that I think is fairly  
14 important here in terms of time is our scope was very, very  
15 broad on this case. Initially, we were tasked with reviewing  
16 nearly everything, I would say, and over time, the scope of the  
17 search was refined. In some cases, what we were asked to take  
18 off the table, we would later be asked to put back on the table  
19 in terms of forensic analysis.

01:14 20 Q. You testified that you have one other full-time employee?

21 A. That's correct.

22 Q. Does she have forensics background?

23 A. Yes.

24 Q. Can you just give us a very brief description of what her  
25 background is?

1 A. My other full-time employee at this time has a computer  
2 science background, computer science degree from Boston  
3 University, as well as an AccessData certification for the  
4 Forensic Toolkit product essentially and has taken a  
5 significant volume of industry training. By "industry," I mean  
6 computer forensics.

7 Q. And did any of your work or analysis on this case from  
8 your firm go through your eyes before you were presenting it?

9 A. I sent nearly all of the emails to counsel, hundreds of  
01:14 10 emails, since January 21, 2010, and I reviewed all of those.

11 Q. No offense to me, but would you hire me at your firm?

12 A. No.

13 Q. Why not?

14 MR. CHAKRAVARTY: Objection, your Honor.

15 THE COURT: Sustained.

16 MS. PATEL: That's all I have.

17 MR. CHAKRAVARTY: Nothing further.

18 THE COURT: All right, sir. Thank you. You may step  
19 down, Mr. Spencer.

01:15 20 MS. BASSIL: Your Honor, at this time I would call  
21 Doctor Thomas Connolly.

22 THE WITNESS: Step up here, please.

23 THOMAS F. CONNOLLY, Sworn

24 THE CLERK: Please be seated. State your name. Spell  
25 your last name for the record. Keep your voice up and speak

1 into the mic so everyone can hear you.

2 THE WITNESS: My name is Thomas F. Connolly,  
3 C-o-n-n-o-l-l-y.

4 MS. BASSIL: Thank you.

5 DIRECT EXAMINATION BY MS. BASSIL:

6 Q. Are you -- what do you do?

7 A. I'm a professor of English.

8 Q. Where are you a professor of English?

9 A. At Suffolk University.

01:16 10 Q. How long have you taught there?

11 A. Since 1986.

12 Q. Is there other work you've done during that time period,  
13 1986 to 1996?

14 A. Yes. I'm also regularly employed at the Tufts University  
15 Graduate School as a professor in their graduate program.

16 Q. What is the graduate program?

17 A. It's -- I teach Ph.D. candidates and master's candidates  
18 in drama.

19 Q. Do you have a Ph.D.?

01:16 20 A. Yes, I do.

21 Q. Now. What is your Ph.D. in?

22 A. Drama, from Tufts University.

23 Q. Do you also have a master's degree?

24 A. Yes. I have a master's degree in English from Boston  
25 University and an English B.A. from Suffolk University.

1 Q. Are you published in your field?

2 A. Yes. I have published three books, numerous articles,  
3 many, many reference articles, and other scholarly  
4 publications.

5 Q. Can you tell the jury just quickly what are the three  
6 books that you've published?

7 A. My most recent book is called the *Genus Envy:*  
8 *Nationalities, Identities, and the Performing Body of Work.* I  
9 have a book called *George Jean Nathan and the Making of Modern*  
01:17 10 *American Drama Criticism*, and a book called *British Aisles:*  
11 *Studies in English and Irish Drama and Theatre from Medieval*  
12 *through Modern Times.*

13 Q. Are those books published by an academic press?

14 A. Yes. All three were published by academic publishers.

15 Q. How did you come to publish these books?

16 A. Each of these were -- I was asked by the publishers to  
17 submit a manuscript.

18 Q. When you submitted your manuscript, was it peer-reviewed?

19 A. Yes.

01:17 20 Q. Was it blindly peer-reviewed?

21 A. Yes.

22 Q. How did that work?

23 A. I received a letter from a publisher after I had given a  
24 conference paper. I'll talk about the *George Jean Nathan* book.  
25 I gave a paper at the American Society For Theatre Research

1 conference about the drama critic George Jean Nathan. About a  
2 month later, I got a letter from Fairleigh Dickinson University  
3 Press asking me if I had a book-length manuscript about this  
4 drama critic. I replied that I did, and it would be ready for  
5 submission in a few months.

6 I submitted it and I waited almost a year, and I got  
7 two anonymous reviews of my manuscript, both which were  
8 favorable. And the press proceeded to publish it.

9 Q. Have you published papers in academic journals?

01:18 10 A. Yes, I have.

11 Q. About how many, would you say?

12 A. Dozens. And I've gone through the same process there. I  
13 -- lately I've been asked to submit articles, and I get an  
14 anonymous review sheet telling me about any changes that need  
15 to be made in the manuscript or things that are good about it  
16 or things they wish I would talk about more. The process is  
17 always -- it takes several months and it's always anonymous.

18 Q. Have you presented at any academic conferences?

19 A. Yes, many, many times in the United States and in Europe.

01:19 20 Q. Now, have you acted as a consultant with any media  
21 outlets?

22 A. Yes. The New Yorker magazine, the British Broadcasting  
23 Corporation, NPR, CBS.

24 Q. In your work, do you review literature both American and  
25 from the United Kingdom?

1 A. Yes, I do. I frequently teach survey courses in  
2 literature ranging from Chaucher's Middle English to  
3 Contemporary English. I regularly teach courses in Modern  
4 British Drama, 19th Century British Drama, 18th Century British  
5 Drama, so that I have to read British English all the time.

6 Q. Are you familiar with different usages of words and  
7 different spellings between United Kingdom English and American  
8 English?

9 A. Yes, yes, I am.

01:20 10 Q. Were you asked to perform -- how did you come to get  
11 involved in this case?

12 A. I was asked to offer my testimony as an expert, and I was  
13 given a video and a transcript and to make a comparison between  
14 the subtitles in the video and the transcript. And I watched  
15 the video through, and then stopping it and starting it, I went  
16 through it one sentence at a time.

17 Q. Was this video the Expedition of Umar Hadeed?

18 A. Yes.

19 MS. BASSIL: Your Honor, at this time, I would like to  
01:20 20 offer Exhibit 1282, which is just the blank translation.

21 MR. AUERHAHN: I believe that's already been  
22 introduced.

23 MS. BASSIL: I didn't think it had been, but -- I  
24 didn't think it had been.

25 THE COURT: I'm sorry. What's the number? 1282?

1                   MS. BASSIL: Yes. If you have a number, I would be  
2 happy to take it.

3                   MR. AUERHAHN: I have no objection. I think it's the  
4 same as one that we introduced.

5                   THE COURT: Okay. I see. I don't even have it on my  
6 list.

7                   MS. BASSIL: I couldn't find it.

8                   THE COURT: Is this not updated, Paul?

9                   MS. BASSIL: I would be happy to take it.

01:21 10           THE COURT: All right. So he has it. I don't. I  
11 have the old version: paper. Anyway --

12                   MR. AUERHAHN: That's Government Exhibit 340.

13                   MS. BASSIL: 340? If we could have 340, Mr. --

14                   THE COURT: I want to be clear, are you then offering  
15 it or not offering it in light of the fact --

16                   MS. BASSIL: It's already an exhibit. I'm going to  
17 refer to Exhibit 340.

18                   THE COURT: Fine. So we want the government's  
19 computer.

01:21 20           MS. BASSIL: If you could just make the top a little  
21 bigger so we could really see what it is. Doctor Connolly, can  
22 you see this document?

23                   A. Yes.

24                   Q. And is this the document that you were provided?

25                   A. Yes.

1 Q. You said you compared this document to the actual video?

2 A. Yes.

3 Q. And how did you do that?

4 A. I had the transcript in front of me and, watching the  
5 video, stopping and starting it, I made comparisons between the  
6 subtitles that were on the screen and what was on the paper.

7 Q. Did you see differences between what was on the screen and  
8 what was on the paper?

9 A. Yes, I did.

01:22 10 MS. BASSIL: At this time, your Honor, I'd like to  
11 offer Exhibit -- this would be 1282 then. And I've given the  
12 government a copy of this.

13 MR. AUERHAHN: No objection, your Honor.

14 THE COURT: What is this?

15 MS. BASSIL: 1283, I'm told.

16 THE COURT: What is it?

17 MS. BASSIL: Your Honor, it's Mr. Connolly's marked-up  
18 copy of the same document.

19 THE COURT: All right. There's no objection?

01:22 20 MR. AUERHAHN: No, your Honor.

21 THE COURT: Admitted, 1283.

22 (Exhibit No. 1283 received into evidence.)

23 MS. BASSIL: If we could use the ELMO, your Honor.

24 And if we could -- can I make that bigger?

25 Q. Let me go through this. Doctor Connolly, I see red marks

1 here.

2 A. Yes.

3 Q. What do those indicate?

4 A. That's my writing where I noted differences between what  
5 was in the subtitles and what was on the paper.

6 Q. All right. And I see that what you did is you circled  
7 certain words, and there were words that were different.

8 A. Yes.

9 Q. Are the red words what was on the subtitles?

01:23 10 A. Yes.

11 Q. I see that there are some differences, small differences  
12 in words. The word "happiness," you said was "joy" in the  
13 subtitle?

14 A. Yes.

15 Q. And what did you see here? You have "transgressors" and  
16 "transgressing." Can you explain that?

17 A. Yes. The word "transgressors" was not in the subtitles,  
18 and what was there was "transgressing false deities, these  
19 infidels."

01:24 20 Q. Going down the page, there was one other difference, and  
21 you noted that there was no hyphen on the subtitle?

22 A. Yes.

23 Q. On Page 2 of this document, I see that you noted other  
24 differences?

25 A. Yes.

1 Q. And can you briefly go through these? Over here it says  
2 -- you circled the word "causing"?

3 A. Yes. On the subtitle in the video, it uses the word  
4 "inflicting."

5 Q. Over here, was there a change in the entire phrase?

6 A. Yes, yeah.

7 Q. Can you tell the jury?

8 A. Yes. It does not -- the subtitle does not have "so that  
9 we cause damage to the enemy to a greater extent by the will of  
01:24 10 Allah." It says "so that we can cause a heavy slaughter upon  
11 the enemy and damage them to a greater extent by the will of  
12 Allah."

13 Q. And then there continues to be changes on the document, is  
14 that correct?

15 A. Yes.

16 Q. Right here, on this translation, it says, "Two good  
17 endings." And what was it on the document? I'm sorry. What  
18 was it on the video?

19 A. Where?

01:25 20 Q. I'm right here.

21 A. I'm sorry. I can't find it.

22 Q. Can you see it now?

23 A. Yes, yes. "Beautiful."

24 Q. That's what was on the video?

25 A. The video, yes.

1 Q. Here, if you see -- you have circled -- you had circled  
2 the word "polytheism"?

3 A. Yes.

4 Q. What was on the video?

5 A. "Shirk."

6 Q. Over here you have circled -- it says, "As in it is the  
7 way"?

8 A. Yes.

9 Q. What was on the video?

01:26 10 A. "For that is the way to salvation."

11 Q. And you continued to circle a number of things that were  
12 different, is that correct?

13 A. Yes.

14 Q. Over here it says, "You have no excuse." What did you  
15 note that was different on the video?

16 A. In the video, it's not capitalized like that. There's no  
17 emphasis.

18 Q. I notice here you have some numbers along the way?

19 A. Yes.

01:26 20 Q. 39:44. What are those numbers?

21 A. That's the timing on the video so that I was keeping track  
22 of exactly where they were on the video as opposed to the  
23 paper.

24 Q. And on Page 3, you saw -- you, again, made corrections or  
25 changes that you saw between the video and the translation, is

1       that correct?

2       A.     Yes, yes.

3       Q.     And I want to point your attention to here.

4       A.     Yes.

5       Q.     Would you explain this to the jury?

6       A.     Yes. One of the words is highlighted in yellow and that's  
7       "realise." On the -- the subtitles reads, "Then you would  
8       realise" --

9       Q.     I'm sorry.

01:27 10      A.     "Then you would realise that there is nothing hindering  
11     you from it." Realize here is spelled r-e-a-l-i-s-e, which is  
12     a British spelling.

13      Q.     Let me show you a screen shot.

14                  MS. BASSIL: Your Honor, this would be Exhibit 1284  
15     [sic]. The government has no objection to this.

16                  THE COURT: All right.

17     (Exhibit No. 1281 received into evidence.)

18      Q.     Is this a screen shot from the video?

19      A.     Yes.

01:27 20      Q.     And this is where the word "realize" is spelled  
21     R-e-a-l-i-s-e?

22      A.     Yes.

23      Q.     What is significant about that?

24      A.     That's British English. In America, we spell it  
25     R-e-a-l-i-z-e.

1 Q. And this is the video, the Expedition of Umar Hadeed, is  
2 that correct?

3 A. Yes.

4 Q. And you were provided with this translation from Mr.  
5 Mehanna's computer, correct?

6 A. As far as I know, yes.

7 Q. Now, going back to Page 3, I note you also showed that  
8 there were other differences. And then you have here "long  
9 lines of martyrdom." Do you see that?

01:28 10 A. Yes.

11 Q. What was on the video?

12 A. "Queues," Q-u-e-u-e-s.

13 Q. I'm going to show you a screen shot again from the  
14 Expedition of Umar Hadeed. Do you recognize that screen shot?

15 A. Yes.

16 MS. BASSIL: Your Honor, this would be Exhibit 1280.  
17 The government has no objection.

18 THE COURT: Okay.

19 (Exhibit No. 1280 received into evidence.)

01:29 20 Q. This is the word you're referring to?

21 A. Yes.

22 Q. Q-u-e-u-e-s. What does that mean?

23 A. Well, lines. But it's normal -- it's a normal word in  
24 British English but it's quite unusual, extraordinary, for an  
25 American to say that. It would be an affectation of trying to

1 imitate somebody from England.

2 Q. On the next page, Page 4, I see that you had a number of  
3 corrections on that as well, or differences --

4 A. Differences.

5 Q. -- between the translation and the video, is that correct?

6 A. Yes.

7 Q. You have a lot of writing here. Could you explain to the  
8 jury what the difference was that you saw between the  
9 translation and the actual video?

01:29 10 A. Yes. Where the green bracket is, "Allah is the greatest  
11 and all is our Honour." Honour is spelled H-o-n-o-u-r rather  
12 than H-o-n-o-r. And "honour" is, again, British English.  
13 O-U-R is normal for British English with words ending in O-R in  
14 American English. But it's not normal at all for American  
15 English.

16 Q. Let me see if I have this. You have said the first one, I  
17 believe, was the word "realise"?

18 A. Yes.

19 Q. And that was spelled R-e-a-l-i-s-e --

01:30 20 A. Yes.

21 Q. -- on the video --

22 A. Yes.

23 Q. -- is that correct?

24 And the American way of spelling "realize" is what?

25 A. R-e-a-l-i-z-e.

1 Q. And then the next one that we looked at was the word  
2 "queue"?

3 A. Yes.

4 Q. Q-u-e-u-e?

5 A. Yes.

6 Q. And what does that mean -- what do Americans use for this?

7 A. Lines, standing in line. The British would say "queuing  
8 up."

9 Q. The next one you said was honour, h-o-n-o-u-r?

01:31 10 A. Yes.

11 Q. How is the American spelling of that?

12 A. H-o-n-o-r.

13 Q. On Page 5, again, there were a number of differences  
14 between the video --

15 A. Yes.

16 Q. -- and the translation, is that correct?

17 A. Yes.

18 Q. You noted all of these, did you not?

19 A. Yes.

01:31 20 Q. I note that there's -- it looks like there's a number of  
21 differences on the phrase "all praises for Allah"?

22 A. Yes.

23 Q. Can you explain that to the jury?

24 A. Yes. In the transcript here, it's written "praise be to  
25 Allah." But in the subtitles "all praise is for Allah." Each

1 time in the subtitles you read "all praise is for Allah," not  
2 "praise be to Allah."

3 Q. And based on your education and training, your review of  
4 English -- of American literature and drama and drama and  
5 literature from the United Kingdom, do you have an opinion as  
6 to the type of person who did the final translations on this  
7 video?

8 MR. AUERHAHN: Objection, your Honor.

9 THE COURT: Sustained.

01:32 10 Q. Do you have an opinion as to the -- I'm sorry, the  
11 education of the person who did the final translation on the  
12 video?

13 MR. AUERHAHN: Objection, your Honor.

14 THE COURT: Sustained.

15 Q. Did an American do the final translation on this video?

16 A. No.

17 MR. AUERHAHN: Objection, your Honor.

18 THE COURT: Sustained as phrased.

19 Q. Based on your education, training, your study of American  
01:32 20 and United Kingdom literature and your review of the subtitles  
21 in this case and on that video and your review of the  
22 translation, do you have an opinion as to the use of United  
23 Kingdom's spelling and words on the subtitles in the Expedition  
24 of Umar Hadeed?

25 MR. AUERHAHN: Objection, your Honor. The question is

1 way too vague.

2 THE COURT: I'm not clear what the question is.

3 Q. The question is: Did someone who did the translating,  
4 were they educated in the United Kingdom?

5 MR. AUERHAHN: Objection.

6 THE COURT: Sustained.

7 Q. Can you determine how this person was educated or where  
8 they came from?

9 MR. AUERHAHN: Objection.

01:33 10 THE COURT: You may answer whether you can determine  
11 that.

12 A. Yes.

13 Q. What did you determine?

14 MR. AUERHAHN: Objection, your Honor.

15 THE COURT: He may answer.

16 MR. AUERHAHN: May we approach sidebar?

17 THE COURT: Well, okay.

18 (SIDEBAR CONFERENCE AS FOLLOWS:

19 MR. AUERHAHN: Your Honor, first of all, there's  
01:34 20 evidence that more than one person worked on this particular  
21 video project. So it's creating a false impression based on  
22 the facts that are not in evidence and not accurate.

23 THE COURT: I think that's a matter for cross.

24 MR. AUERHAHN: Okay.

25 . . . END OF SIDEBAR CONFERENCE.)

1 Q. Do you have an opinion as to whether the subtitles were  
2 written by someone who was American trained or English trained?

3 A. Yes.

4 Q. What is that?

5 A. The person who wrote those subtitles was either trained in  
6 the United Kingdom to speak English or was taught English by a  
7 teacher trained in British English.

8 Q. What is your understanding of Mr. Mehanna's education?

9 MR. AUERHAHN: Objection.

01:34 10 THE COURT: Sustained.

11 Q. Doctor Connolly, were you asked to look at another  
12 translation?

13 A. Yes.

14 MS. BASSIL: This would be Exhibit 782, already in  
15 evidence.

16 Q. Did you review this translation?

17 A. Yes, I did.

18 Q. In this translation someone -- it says, "Dear brother, I  
19 have translated it. Some sentences will not be grammatically  
01:35 20 correct," correct?

21 A. Yes.

22 Q. And I would ask you --

23 MS. BASSIL: I'm going to ask you if we could make  
24 this bottom piece bigger, the bottom half, right here.

25 Actually, if we could blow up that line, that's great.

1 Q. Did you see this word, "organisation"?

2 A. Yes.

3 Q. Is that a particular type of spelling?

4 A. Yes. Again, that's British English. In American English,  
5 it would be spelled o-r-g-a-n-i-z-a-t-i-o-n.

6 MS. BASSIL: And if we could go to the next page. And  
7 if we could blow up this bottom, from here.

8 Q. Again, did you see British, or U.K., spelling in this part  
9 of the document?

01:36 10 A. Yes. "Recognised" is spelled with an "S," and in American  
11 English, it's spelled with a "Z."

12 Q. What about here?

13 A. "Organisation," again, here it's spelled with an "S,"  
14 which is British English; and in American English, we spell it  
15 with a "Z."

16 Q. And here?

17 A. "Honour," again, as in the previous document, it's  
18 h-o-n-o-u-r, which is British English. In the United States,  
19 we spell it h-o-n-o-r.

01:37 20 Q. And here?

21 A. Again, organization with an "S" instead of a "Z."

22 MS. BASSIL: If we could go to the next page, please.  
23 And if we could blow up the first paragraph.

24 Q. Again, can you explain to the jury the significance of  
25 that word?

1 A. Yes, "honourable." It's the same. The O-U indicates  
2 British English. In American English, it would be  
3 h-o-n-o-r-a-b-l-e.

4 MS. BASSIL: Also, if we could go to the last  
5 paragraph on this page, please.

6 Q. If you can see that, what -- I just made a big mess of it.  
7 There we go.

8 Did you notice an error, grammatical error?

9 A. Yes. This translation consistently used this pronoun  
01:38 10 incorrectly. T-h-e-r-e was used all the way through it instead  
11 of t-h-e-i-r, the possessive pronoun.

12 MS. BASSIL: Could we go to the next page, please?

13 And if we could blow up the second line. That would be great.

14 Q. Again, did you see that same error?

15 A. Yes. The second word, t-h-e-r-e, should be t-h-e-i-r.  
16 And it's -- a few words later, the mistake is there again.

17 MS. BASSIL: Can we go to the next paragraph, please?

18 Yes, if we could blow up the second paragraph.

19 Q. Did you see a British spelling in this paragraph?

20 A. Labourers, l-a-b-o-u-r-e-r-s. Again, the O-U in British  
21 English, which in American English would be just an "O."

22 Q. So in American English, it would be l-a-b-o-r-e-r-s?

23 A. Yes.

24 MS. BASSIL: And if we could go a little bit further  
25 down the page, please. And if we could have this paragraph

1 bigger.

2 Q. Again, did you see the same grammatical mistake?

3 A. Yes. The t-h-e-r-e should be t-h-e-i-r.

4 MS. BASSIL: If we could go to the next page, please.

5 And if we could blow up this part.

6 Q. Did you see this phrase, "Allah is my reckon and he is the  
7 best of reckon"?

8 A. Yes.

9 Q. What is your understanding of this word?

01:40 10 A. This makes no sense in either British or American English.  
11 I assume it's meant to be Allah is my "reckoning," but I looked  
12 in various dictionaries, dictionaries going back to the 18th  
13 Century. There's -- this is a nonexistent usage. I don't know  
14 where the writer got this construction.

15 MS. BASSIL: Thank you. If we could have the next  
16 paragraph.

17 Q. Again, is this British spelling?

18 A. Yes, again, that's -- yes. That's used twice in British  
19 spelling.

01:40 20 Q. It's used a third time?

21 A. Three times in the paragraph.

22 MS. BASSIL: If we could go to the last paragraph,  
23 please.

24 Q. And the word "publicise" on this?

25 A. Yes. That's another example of British English. In

1 American English, it would have a "Z."

2 Q. So "publicise" there?

3 A. Yes.

4 Q. How would that be spelled in American English?

5 A. P-u-b-l-i-c-i-z-e.

6 Q. Did you continue to see grammatical errors with the use of  
7 the word "there" throughout the document?

8 A. Yes, throughout the document.

9 MS. BASSIL: If we could go to Page 8, please. And if  
01:41 10 we could go to the bottom paragraph.

11 Q. Did you see this "rule from the cow boys"?

12 A. Yes.

13 Q. What was your -- what was your comment on this?

14 A. This is someone who doesn't -- this is just a misspelling.  
15 Neither in the United Kingdom nor in the United States does  
16 anyone spell "cowboys" as two words.

17 MS. BASSIL: If we could have Page 9, please. And if  
18 we could blow up this middle paragraph.

19 Q. And the word here, "savour"?

01:42 20 A. Yes. That's another example of British English.

21 Q. How would it be spelled in American English?

22 A. S-a-v-o-r.

23 MS. BASSIL: And if we could remove that, that would  
24 be fine.

25 Your Honor, I'd like to admit the marked-up copy as

1                   Exhibit 1284.

2                   MR. AUERHAHN: No objection, your Honor.

3                   THE COURT: The marked copy of this second one?

4                   MS. BASSIL: Yes.

5                   THE COURT: Okay, fine.

6                   (Exhibit No. 1284 received into evidence.)

7                   MS. BASSIL: 1284. And if I could use the ELMO, your  
8 Honor.

9                   Q. Doctor Connolly, these are the words that I've been  
01:43 10 writing down. And on the side here is United Kingdom usage, is  
11 that correct?

12                  A. Yes.

13                  Q. And on the other side is American usage, is that correct?

14                  A. Yes.

15                  Q. Now, this translation that had been -- we had previously  
16 looked at. Based on your expertise in English and American  
17 literature, United Kingdom literature, are you able to provide  
18 an opinion as to the person who did -- who wrote this  
19 document --

01:43 20                  A. Yes.

21                  Q. -- as to their education in writing this document?

22                  A. Yes. This is a person who was not educated in American  
23 English. This is not a native speaker of American English.

24                  Q. Do you have an opinion as to whether this person, whether  
25 English was their native language?

1 A. I strongly doubt it.

2 MR. AUERHAHN: Objection.

3 THE COURT: Sustained to that. The jury will  
4 disregard that last answer.

5 MS. BASSIL: I have no further questions.

6 THE COURT: Do you have --

7 MR. AUERHAHN: Take a break?

8 THE COURT: Do you have a time estimate?

9 MR. AUERHAHN: More than just a couple minutes.

01:44 10 THE COURT: Okay. We'll take the morning recess.

11 (Recess taken at 11:03 a.m.)

12 (After the recess:)

13 THE CLERK: All rise for the Court and the jury.

14 (The Court and jury enter the courtroom at 11:28 a.m.)

15 THE CLERK: Please be seated.

16 MS. BASSIL: Your Honor, for the record, I just wanted  
17 to correct an exhibit number.

18 THE COURT: Okay.

19 MS. BASSIL: And that is, I had erroneously stated  
02:08 20 that a particular photograph was 1284. This should be Exhibit  
21 1281.

22 THE COURT: Oh, okay.

23 MS. BASSIL: All right? So I just wanted to correct  
24 that for the record.

25 THE COURT: And so the later 1284 was 1284?

1 MS. BASSIL: Yes.

2 THE COURT: Okay.

3 MR. AUERHAHN: May I, your Honor?

4 THE COURT: Please.

5 CROSS-EXAMINATION

6 BY MR. AUERHAHN:

7 Q. Good morning, sir.

8 MR. AUERHAHN: Could we bring up 782, please? On both  
9 screens, your Honor, please?

02:09 10 THE COURT: It should be.

11 MR. AUERHAHN: Thank you.

12 BY MR. AUERHAHN:

13 Q. Now, sir, were you told that this particular exhibit was  
14 found on the defendant's computer during a search in 2006?

15 A. I believe so.

16 Q. Okay. And it's fair to say that in looking at this  
17 document, there's no way for you to tell whether or not this is  
18 a first draft, a second draft or a third draft, correct?

19 A. Correct.

02:09 20 Q. Okay. And if it's a second draft or a third draft -- or,  
21 as a matter of fact, even if it's a first draft -- strike that.

22 If it's a second or third draft, you have no way of  
23 knowing whether the first draft was done by someone who's  
24 British?

25 A. I wouldn't be able to talk at all about a first or second

1 draft.

2 Q. Okay. And it's your belief that if this is multiple  
3 drafts, at least one of the drafts was --

4 MS. BASSIL: Objection, your Honor. He did not say it  
5 was his belief it was multiple drafts.

6 BY MR. AUERHAHN:

7 Q. No. I said that it's your --

8 THE COURT: Just start the question again.

9 BY MR. AUERHAHN:

02:10 10 Q. I said it's your belief if this is a result of multiple  
11 drafts, then at some point in time someone who's British had a  
12 role in drafting this document?

13 MS. BASSIL: Your Honor, the witness said he didn't  
14 know if there were multiple drafts.

15 THE COURT: Yeah. It's a conditional.

16 Go ahead. You may have it.

17 Do you understand the question, sir?

18 THE WITNESS: No, I don't.

19 THE COURT: All right. Put it again.

02:10 20 BY MR. AUERHAHN:

21 Q. So first you couldn't tell us if this is a result of  
22 multiple drafts. We agree on that?

23 A. No one could.

24 Q. Thank you. If it were the -- I'm asking you a  
25 hypothetical. If it were the result of multiple drafts, your

1 belief is that at some point in time someone who is British had  
2 a role in drafting this document?

3 A. Yes.

4 MR. AUERHAHN: All right. Could we go to page --

5 Q. Well, first, before we do that, sir, what's a lorry?

6 A. It's a truck in British English.

7 Q. Okay. And so someone from the United Kingdom wouldn't  
8 normally write "truck"; they'd write "lorry"?

9 A. Yes.

02:11 10 MR. AUERHAHN: Okay. Can we go to page 4 of this  
11 exhibit, please?

12 Q. And do you see on the third line where it says "from truck  
13 drivers"?

14 A. Yes.

15 Q. Okay. So that's an indication to you that someone who  
16 spoke American English had a role in this document?

17 A. Yes.

18 Q. So based on that, you didn't come to the conclusion that  
19 there's more than one author involved in this particular  
02:11 20 document?

21 A. No, but "truck" is also used transatlantically.

22 Q. Okay. But "lorry" is more common in the United Kingdom?

23 A. Well, it's also informal.

24 Q. Sir, "lorry" is more common in the United Kingdom?

25 A. Yes.

1                   MR. AUERHAHN: And could we bring up Exhibit 512,  
2 please?

3                   Q. Okay. I'm going to read to you and ask you a question.  
4 "Do you have the Hollywood film Wa-Yakoon ad Deen?" The other  
5 person answers, "Yes."

6                   "Okay."

7                   "Starring the Slicer."

8                   "Can you just go through that and edit what needs to  
9 be edited?"

02:12 10                   "What do you mean?"

11                   "Press accept. You'll see."

12                   "Accept what?"

13                   "Abu Mu'ndhir, waiting for the person to accept the  
14 file 'WaYakoon.doc.' Please wait for response or cancel the  
15 file transfer."

16                   So, sir, are you aware that this particular -- or at  
17 least some version of WaYakoon.doc was received in an instant  
18 message between Abu Mu'ndhir and another person?

19                   A. No, I'm not.

02:12 20                   Q. Well, do you understand what this is --

21                   MS. BASSIL: Objection.

22                   THE COURT: Go ahead.

23                   If the objection was to the last question, it's  
24 overruled. The answer may stand.

25                   Next question.

1 BY MR. AUERHAHN:

2 Q. Do you know that the person -- that this person is the  
3 defendant?

4 A. No, I do not.

5 Q. Okay. And do you see here where it says "WaYakoon.doc"?

6 A. Yes.

7 Q. Okay. And that's what this document was called also,  
8 Wa-Yakoon, correct, Exhibit --

9 A. When you say "this document," what are you talking about?

02:13 10 Q. Exhibit 782, which you analyzed.

11 A. Yes.

12 Q. Now, do you know whether or not the WaYakoon.doc was  
13 Exhibit 782 or some other version of the Wa-Yakoon video?

14 A. No, I don't.

15 Q. You have no way of knowing that?

16 A. No.

17 Q. And defense counsel didn't give you any chats to review as  
18 part of your analysis?

19 A. I was only given one copy.

02:13 20 Q. Now, if --

21 MR. AUERHAHN: You can take that down, Paul. Thank  
22 you.

23 Q. Now, if -- the differences in the spellings you pointed  
24 out, one isn't right and one isn't wrong; it's just different  
25 styles, correct?

1 A. Yes.

2 Q. Okay. So if an author was collaborating with someone in  
3 the United Kingdom who did a first draft of the document, when  
4 he receives the first draft he can either leave the English  
5 version or change it to American, correct?

6 MS. BASSIL: Objection.

7 THE COURT: Overruled.

8 THE WITNESS: Could you ask it again, please?

9 BY MR. AUERHAHN:

02:14 10 Q. In other words, you're in the United States, you're  
11 collaborating on a document with someone from the United  
12 Kingdom and he does the first draft, so he naturally uses words  
13 with British spellings and then sends it to you to edit. Do  
14 you understand me so far?

15 A. Yes.

16 Q. You can leave the British spelling in because, after all,  
17 it's not wrong --

18 A. Well, it's not quite that simple. It would depend on who  
19 the audience is.

02:15 20 Q. Excuse me, sir. The way it works, I finish a question and  
21 then you answer it. You can either say "yes" or "no," or say  
22 "I can't answer that," okay?

23 So my question is: You're collaborating with someone  
24 in the United Kingdom who sends you a first draft containing  
25 British spellings of words. You can leave those British

spellings because, after all, they're not incorrect. Isn't  
that true?

3 A. I can't answer that.

4 Q. And it's fair to say that if the version that was received  
5 by the defendant had British spellings, he could have chosen to  
6 leave those into the final product?

7 A. I can't answer that.

8 | Q. Now, sir --

9 MR. AUERHAHN: Can we bring up Exhibit 379, please?

02:15 10 Q. Do you recognize this document?

11 | A. Yes.

12 Q. And it's fair to say this appears to be the same as 782  
13 but without that heading at the top about "Note to Your  
14 Brother"?

15 A. I assume so. It looks pretty close.

16 Q. And, sir, were you told that this document was found on  
17 Waseem Mughal's computer?

18 MS. BASSIL: Objection.

19 THE COURT: Sustained.

02:16 20 BY MR. AUERHAHN:

21 Q. Sir, do you know -- well, the evidence in the case is it  
22 was found on --

23 MS. BASSIL: Objection.

24 MR. AUERHAHN: I apologize, your Honor.

25                  Would you take that down, please?

1 BY MR. AUERHAHN:

2 Q. Now, sir, Exhibit 340 -- now, this is the "Expedition of  
3 Umar Hadeed." This is the document you analyzed and compared  
4 to the video?

5 A. Uh-huh.

6 Q. Do you know what Tibyan Publications was?

7 A. I beg your pardon?

8 Q. Do you know what Tibyan Publications was?

9 A. No.

02:17 10 Q. Do you know who ultimately released the Umar Hadid video?

11 A. No.

12 Q. Do you know whether or not a number of administrators,  
13 moderators and translators on the organization that released  
14 Umar Hadid were British?

15 A. No.

16 MS. BASSIL: Objection.

17 THE COURT: No, that answer may stand.

18 BY MR. AUERHAHN:

19 Q. Now, with reference to Exhibit 340, similar to the  
02:17 20 questions I asked you before on the Wa-Yakoon, do you know  
21 whether this is a first draft, a second draft or a third draft?

22 A. No.

23 Q. And you also have no way of knowing whether or not someone  
24 collaborated with the ultimate author on this particular  
25 project?

1 A. No.

2 Q. Okay. And were you told that this was not found on the  
3 defendant's computer but was found on a floppy disk in 2009?

4 A. Could you ask that again, please?

5 Q. Were you told that this was not found on the defendant's  
6 computer but found on a floppy disk in 2009?

7 A. No.

8 Q. Okay. And with reference to this particular draft, do you  
9 know whether or not the author started from scratch or received  
02:18 10 a version from someone else?

11 A. I can't answer that.

12 MR. AUERHAHN: Now, could we bring up Exhibit 415,  
13 please?

14 Q. Now, do you see here where someone named Muraabit sends a  
15 video link to Abu Sabaayaa known as Umar Hadid? Do you see  
16 that?

17 A. I see some of the things you're referring to but not all  
18 of them.

19 Q. Okay. Well, here's Aboo Mahmoud Muraabit. Do you see  
02:19 20 that?

21 A. Uh-huh.

22 Q. And you see the link to the video Umar Hadid?

23 A. Yes.

24 Q. Okay. You see that. Do you know who Muraabit was?

25 A. No.

1 Q. Do you know whether or not the GUH video was a project by  
2 one person or more than one person?

3 MS. BASSIL: Objection.

4 THE COURT: You may answer it. You may answer.

5 THE WITNESS: No.

6 BY MR. AUERHAHN:

7 Q. Okay.

8 MR. AUERHAHN: Would you bring up Exhibit 514, please?  
9 Page 2?

02:20 10 Q. Okay. Abu Mu'ndhir: "Can't download that stuff right  
11 now."

12 MS. BASSIL: Objection, your Honor.

13 THE COURT: Yeah, I think with this witness,  
14 sustained.

15 MR. AUERHAHN: Okay.

16 BY MR. AUERHAHN:

17 Q. Sir, would it make a difference to your analysis as to  
18 whether or not it was -- whether or not someone from an  
19 American background wrote these translations if you knew  
02:20 20 whether or not someone from the United Kingdom was also  
21 involved in the translation project?

22 A. Could you rephrase that, please?

23 Q. Yes. In other words, you've identified certain British  
24 uses of words and came to the conclusion that an American did  
25 not write -- or finalize the version you're looking at. So my

1 question is: Would it affect your analysis if you learned that  
2 someone else, potentially someone from the United Kingdom,  
3 participated in the drafting of these written documents?

4 MS. BASSIL: Objection, your Honor. There's no  
5 evidence of that.

6 THE COURT: No, overruled.

7 You may answer the question.

8 THE WITNESS: Yes, I suppose.

9 BY MR. AUERHAHN:

02:21 10 Q. Okay. So where Abu Mu'ndhir says, "Even GUH, which I  
11 worked on." Do you see that on the bottom?

12 A. Yes.

13 Q. And GUH is the "Expedition of Umar Hadeed." So this  
14 appears to be a statement by Abu Mu'ndhir indicating that he  
15 worked on it.

16 MS. BASSIL: Objection, your Honor. We don't know  
17 what he worked on.

18 THE COURT: Well, at any rate. Yes, the objection is  
19 sustained.

02:22 20 BY MR. AUERHAHN:

21 Q. Would it have been important to your analysis to know that  
22 someone named Abu Mu'ndhir worked -- claimed to have worked on  
23 this project?

24 MS. BASSIL: Objection, your Honor. He could have  
25 worked on the video portion. We don't know.

1                   THE COURT: Well, you may answer the question.

2                   THE WITNESS: I can't answer that.

3                   BY MR. AUERHAHN:

4                   Q. Well, wouldn't you want to know whether Abu Mu'ndhir was  
5 British?

6                   A. I was only looking at one specific translation.

7                   Q. So the fact that someone who might be British could have  
8 been involved in this project was not allowed to interfere with  
9 your conclusion about who drafted it?

02:22 10                  MS. BASSIL: Objection.

11                  THE COURT: Overruled.

12                  You may answer that.

13                  THE WITNESS: Could you ask me that again, please?

14                  BY MR. AUERHAHN:

15                  Q. All right. Sir, wouldn't it be important to you to know  
16 if more than one person worked on this project?

17                  A. No.

18                  Q. Well, if one of those people was from the United Kingdom,  
19 that wouldn't affect your opinion?

02:23 20                  A. I was only looking at a document that was put in front of  
21 me, and I was judging that as a document itself and determining  
22 whether it was written in British English or American English.  
23 And what I did was determine that it was written in British  
24 English.

25                  Q. So with -- strike that.

1                   MR. AUERHAHN: Could we have Exhibit 700, please?

2 Page 2, 4, 6, 7.

3 Q. Do you see this section here where the defendant says,  
4 "The Umar Hadid video, Abu Sabaayaa translated it"? Do you see  
5 that?

6 A. Yes.

7 Q. Do you know who Abu Sabaayaa is?

8 A. No.

9 Q. So we have two chats here, one where Abu Mu'ndhir says "I  
02:24 10 worked on it" and one where someone says Abu Sabaayaa worked on  
11 it.

12                  MS. BASSIL: Objection, your Honor. This is  
13 argumentative. This is closing argument, not questions.

14                  THE COURT: No, you may have it.

15 BY MR. AUERHAHN:

16 Q. Sir, my question is: Was this important information to  
17 you in determining who was involved in translating these  
18 projects?

19 A. I didn't have this information.

02:24 20 Q. Exactly. So is there some reason why you didn't want to  
21 let the facts get in the way of your opinion?

22                  MS. BASSIL: Objection.

23                  THE COURT: Sustained.

24                  MR. AUERHAHN: No further questions, your Honor.

25                  MS. BASSIL: No questions, your Honor.

1                   THE COURT: All right, Professor Connolly. Thank you.  
2 You may step down.

3                   (The witness is excused.)

4                   THE COURT: Let me see counsel at the side for a  
5 moment.

6                   (Discussion at sidebar and out of the hearing of the  
7 jury:)

8                   THE COURT: I think we have two pieces of business  
9 without the jury before the next witness begins, and so I would  
02:25 10 propose to excuse them now and we'll do those. I would like to  
11 do the voir dire we talked about yesterday first, and then move  
12 to addressing issues regarding Dr. Sageman's testimony. I  
13 don't know whether that will -- how long that will take, but I  
14 think if it didn't take till one o'clock, whatever time would  
15 be left would be pretty short, and we may as well start fresh  
16 in the morning.

17                  MR. CARNEY: I think that's a good idea.

18                  THE COURT: Okay. So I'll excuse them. Are we ready  
19 to go with the FBI?

02:25 20           MR. CHAKRAVARTY: Yes, they're here.

21                  THE COURT: Okay.

22                  (In open court:)

23                  THE COURT: Jurors, there are a couple of matters that  
24 the lawyers and I have to do without you, so I think it's going  
25 to take enough time that it will probably get us close enough

1 to one that we won't begin the next witness. So consider this  
2 an early discharge. We'll let you go a little early. We'll  
3 resume with the evidence tomorrow morning, okay?

4 We're in good shape. Again, I want to keep assuring  
5 you of that, okay? So enjoy the rest of the day and we'll see  
6 you tomorrow morning.

7 We'll stay in session.

8 THE CLERK: All rise for the jury.

9 (The jury exits the courtroom at 11:46 a.m.)

02:26 10 THE CLERK: Please be seated.

11 THE COURT: Okay. As we discussed yesterday, I will  
12 permit a focused voir dire regarding communications with the  
13 witness Abuzahra about potential promises or inducements from  
14 the government.

15 Mr. Carney?

16 MR. CARNEY: Yes, your Honor. May I move that  
17 witnesses from the FBI who possibly would have relevant  
18 information be sequestered?

19 THE COURT: Fine.

02:27 20 MR. CHAKRAVARTY: I believe there's only two: the  
21 case agents. So your preference as to whether it be Agent Daly  
22 or --

23 MR. CARNEY: Please.

24 MR. CHAKRAVARTY: Daly first?

25 MR. CARNEY: Agent Daly first.

1 (Heidi Williams is sequestered.)

2 THOMAS DALY, duly sworn

3 THE CLERK: Please be seated. State your name and  
4 spell your last name for the record.

5 THE WITNESS: Thomas Daly, D-A-L-Y.

6 MR. CARNEY: Thank you, your Honor.

7 VOIR DIRE EXAMINATION

8 BY MR. CARNEY:

9 Q. Good morning, Mr. Daly.

02:28 10 A. Good morning.

11 Q. How are you employed, sir?

12 A. I am a sergeant with the Lowell, Massachusetts, police  
13 department.

14 Q. How long have you been with the Lowell police?

15 A. I've been with the Lowell police since 1994.

16 Q. How long have you been a sergeant?

17 A. I think since around October of 2003.

18 Q. Are you currently on assignment at a different location?

19 A. Yes.

02:28 20 Q. Where is that, please?

21 A. I'm with the Boston FBI's Joint Terrorism Task Force.

22 Q. Could you describe what that task force is?

23 MR. CHAKRAVARTY: I don't think we need a description  
24 of that, your Honor. If we can just focus on --

25 THE COURT: No, go ahead. You may have it.

THE WITNESS: It's a group of agencies that -- law enforcement agencies and others that work together in the Boston FBI office to investigate terrorism-related matters.

4 BY MR. CARNEY:

5 Q. Did you have a role investigating this case?

6 A. I did.

7 Q. And what was that role?

8 A. I was a case agent in this case.

9 Q. And what does the word -- or the phrase "case agent" mean?

02:29 10 A. Let me see how I would describe that. Agent Williams and  
11 I both kind of took the lead in investigating this case.

12 Q. By referring to Special -- by referring to Agent Williams,  
13 are you referring to Special Agent Heidi Williams?

14 | A. Yes.

15 Q. And she is with the FBI?

16 A. She is, yes.

17 Q. During the course of this investigation did you get to  
18 know Kareem Abuzahra?

19 A. I did.

02:29 20 Q. And how did that happen?

21 A. I believe it began with the proffer interview back in  
22 2006.

23 Q. How many times between 2006 and November of 2011 would you  
24 say that you had contacts with Kareem Abuzahra?

25 MR. CHAKRAVARTY: Objection, your Honor.

1                   THE COURT: Sustained.

2 BY MR. CARNEY:

3 Q. Did you ever speak to him in person during that period?

4 A. Yes.

5 Q. Approximately how many times in person?

6                   MR. CHAKRAVARTY: Objection, your Honor.

7                   THE COURT: Sustained.

8 BY MR. CARNEY:

9 Q. Do you feel you got to know him well?

02:30 10 A. In a work-related environment, yes.

11 Q. Is November 28, 2011, the first date that Kareem Abuzahra  
12 testified in this trial to your knowledge?

13 A. It is.

14 Q. Were you present that day in the court?

15 A. Yes.

16 Q. His testimony ended that day at approximately one o'clock.  
17 Is that right?

18 A. Approximately, yes.

19 Q. Later that day did he call you?

02:30 20 A. I don't believe so.

21 Q. When was the next time you saw him?

22 A. In the morning. Tuesday morning. I'm sorry. Tuesday  
23 morning.

24 Q. And would that be November 29?

25 A. Yes.

1 Q. Did you speak to him before he resumed his testimony?

2 A. Yes.

3 Q. Where did that conversation occur?

4 A. In my car.

5 Q. How did it happen to be in your car?

6 A. I picked him up and drove him to the courthouse.

7 Q. Had you done that the day before?

8 A. Yes.

9 Q. Is that a routine with just this witness or with all the  
02:31 10 witnesses?

11 A. In varying degrees we help witnesses get to the  
12 courthouse. He was the only one that I picked up in the  
13 morning on the way in.

14 Q. Did you pick him up and drop him off every day he  
15 testified?

16 A. I did not drop him off.

17 Q. Just bringing him to court?

18 A. Yes.

19 Q. Did you have a conversation with him that morning in the  
02:31 20 car?

21 A. Yes.

22 Q. Did it concern his employment at the University of  
23 Massachusetts at Lowell?

24 A. Yes.

25 Q. Was that the first time you had had a conversation with

1 him about his job?

2 A. Over all that time --

3 Q. Yes.

4 A. -- since I've known him?

5 I think it was part of the interviews, where he worked  
6 and that type of stuff, but...

7 Q. Had he ever previously expressed a concern to you about  
8 keeping his job?

9 A. I don't believe so.

02:32 10 Q. Did he bring up a concern with you that morning about his  
11 job?

12 A. Yes, he did.

13 Q. What did he say, please?

14 A. He was concerned about what the people he worked with  
15 thought about him related to his previous day's testimony.

16 Q. What did you say?

17 A. At that time I just listened to him.

18 Q. What did he say next?

19 A. He said that he was -- I believe this was -- at that time  
02:33 20 he said that he had been contacted by someone from his work. I  
21 believe his boss's boss, is how he referred to it.

22 Q. Excuse me. You believe it was whom?

23 A. His boss's boss.

24 Q. His boss's boss had contacted Mr. Abuzahra?

25 A. Yes, in some way. I don't know how. And relayed that he

1       needed to call her before he returned to work.

2       Q.     Did he give you this person's name?

3       A.     I'm not sure if I knew it or if he gave it to me.

4       Q.     What is that person's name?

5       A.     It's Patty McCafferty.

6       Q.     Can you spell the last name, please, or do the best you  
7       can?

8       A.     I would have to guess, but I think it's M-C-A-F-F-E-R-T-Y  
9       *[sic]*.

02:33 10      Q.     Do you know what her title is?

11     A.     I believe she's the vice chancellor at the University of  
12     something.

13     Q.     Could it be the University of Massachusetts at Lowell?

14     A.     Oh, yes.

15     Q.     And is the chancellor there Martin Meehan?

16     A.     Yes.

17     Q.     What did Mr. Abuzahra tell you, if anything more, about  
18     his conversation with Ms. MacPhee *[sic]*?

19     A.     I don't know how that notification took place, but I don't  
02:34 20     think anything else other than that.

21     Q.     Did you ask him what she had said?

22     A.     No. I think he told me that he needed to contact her  
23     before he returned to work.

24     Q.     Did he indicate or did she -- did he indicate any reason  
25     why he had to contact her?

1 A. No, not -- I don't remember him indicating any reason why  
2 he had to contact her.

3 Q. Did you discuss further with him why the vice chancellor  
4 might want to be contacting him?

5 A. Why she might be contacting him?

6 Q. Yes.

7 A. In response to him saying that he was contacted by her, I  
8 said, "I was also contacted by her."

9 Q. When had you been contacted by her?

02:35 10 A. Sometime in the afternoon of -- Monday afternoon following  
11 court.

12 Q. Okay. Let's complete talking about the conversation with  
13 Mr. Abuzahra first.

14 A. Okay.

15 Q. This was occurring on Tuesday morning when you were on  
16 your way to court?

17 A. Yes.

18 Q. Did you mention to him that you'd been contacted by the  
19 vice chancellor?

02:35 20 A. Yes.

21 Q. And what did you say to him?

22 A. I said, "I was also contacted by the vice chancellor."

23 Q. Please continue with how your conversation ensued in the  
24 car.

25 A. This was two weeks ago, so forgive me. I can't remember

1 verbatim what was said but --

2 Q. Did you take any notes?

3 A. No. I was driving.

4 Q. You didn't think this was a conversation worthy of taking  
5 notes about?

6 A. I was driving, but, no, I didn't think of it as a very  
7 remarkable conversation.

8 Q. So you're having a conversation with a witness who's on  
9 the stand who might be considered the central witness in the  
02:36 10 case about a concern he has with his job and you spoke to his  
11 boss's boss, and this was a minor conversation, in your mind?

12 A. I think he was concerned about what the people at work  
13 thought about him, not -- he didn't express any concern for his  
14 continued employment.

15 Q. Why did you draw the conclusion that he was more concerned  
16 about the people he worked with than the people he worked for?

17 A. Because I think he said that he was concerned about what  
18 the people thought of him at work.

19 Q. Are those his exact words?

02:37 20 A. No.

21 Q. What else did he say about why he thought people at work  
22 would be concerned about him?

23 A. Well, I think because of some of the things that he  
24 testified to the previous day.

25 Q. Is that what he said?

1 A. I don't know exactly the words. I mean, again, this was  
2 two weeks ago, so I don't remember how he said it.

3 Q. Well, you said that you drew the conclusion that he was  
4 more concerned about his coworkers and what they would think of  
5 him than his employer and whether they would have concerns  
6 about --

7 A. I would assume what his employer thought of him as well.  
8 Everybody at the -- that he came in contact with or knew him at  
9 the university.

02:37 10 Q. Well, I want to focus on that morning in your car, what  
11 was it that Abuzahra said that made you think his coworkers  
12 were concerned about him; for example, did he reference anyone,  
13 had anybody said anything or called him or left him a message  
14 or IM'd him or emailed him? How did he get that impression  
15 after the first day of testimony that his coworkers were  
16 concerned about him?

17 A. I'm not sure if it was that day or not, but he did say at  
18 some point a coworker had contacted him -- I don't know how  
19 that person contacted him. A male coworker, I believe -- and  
02:38 20 said that people were concerned about some of the things that  
21 he had said -- testified to.

22 Q. Was that conversation -- or that part of the conversation  
23 on Tuesday, November 29th, with you?

24 A. I don't remember. I mean, I think it was, but I couldn't  
25 say that for certain.

1 Q. What other conversation did you have him -- with him in  
2 the car?

3 A. I talked to him -- well, I did -- in response to him  
4 saying that he had been contacted by his boss, I said I had  
5 also been contacted by his boss.

6 Q. How did you establish it was the same boss?

7 A. The boss's boss -- I believe he mentioned her name. I  
8 mean, I can't say that for certain, that he mentioned her name  
9 because -- again, I believe it was his boss's boss. I didn't  
02:39 10 know that she was his boss. And anyway, when she contacted me,  
11 I just knew somehow that she was, you know, the vice chancellor  
12 at the university. She would be above, I guess, anybody at the  
13 university.

14 Q. Did he say that she had contacted him as well --

15 A. I believe he did, yes.

16 Q. -- in this conversation?

17 A. I believe, to the best of my memory -- there were a couple  
18 of days -- I drove him in every morning.

19 Q. He testified a total of four different days?

02:40 20 A. Yes.

21 Q. Okay. I'm focusing on the first day.

22 A. Yes.

23 Q. Did he bring up to you that this vice chancellor had  
24 called him?

25 A. I believe he did. I mean, as best I can remember he did

1       that day, yes.

2       Q.     All right. And what did she say to him, according to  
3       Abuzahra?

4       A.     To call before he returned to work.

5       Q.     Did he say he asked her why is that?

6       A.     He did not.

7       Q.     Did he have any further conversation with her?

8       A.     Not to my knowledge.

9       Q.     What did he say to you about that conversation besides  
02:40 10      what she said?

11      A.     About that --

12      Q.     Did he express a concern about why she would want him to  
13      call her?

14      A.     I don't remember him expressing a concern that she wanted  
15      him to call, no.

16      Q.     Did he bring it up first, the call from her, or did you  
17      bring it up first, the call to you?

18      A.     He brought it up first.

19      Q.     What was his tone of voice when he was saying this?

02:41 20      A.     I can't -- normal tone of voice, I guess.

21      Q.     He wasn't a little nervous?

22      A.     Not that I can remember.

23      Q.     Did he ask you why you thought she might be asking him to  
24      call before he returns to work?

25      A.     I don't remember him asking me that, no.

1 Q. So all he said was, "I got a call from the vice chancellor  
2 saying I should call before I come back to work"?

3 A. I'm not sure he referred to her as the vice chancellor. I  
4 think it was the boss's -- his boss's boss or something.

5 Q. And he didn't express any concern about why that was being  
6 required of him?

7 A. Not that I remember.

8 Q. What did -- first, when did your conversation with her  
9 take place?

02:42 10 A. Monday afternoon sometime.

11 Q. Approximately what time?

12 A. It was sometime after court back at the FBI office. I'm  
13 not sure. I mean, I couldn't tell you the time.

14 Q. Did she call you on your office line or your cell phone?

15 A. I believe she called me on my cell phone.

16 Q. Do you know how she got that number?

17 A. Yes.

18 Q. How?

19 A. Well, I'm pretty sure she got it from Lieutenant Melissa  
02:42 20 Mullen at the UMass Lowell Police Department.

21 Q. Is that someone you've had professional contact with in  
22 the past?

23 A. Yes.

24 Q. In your role as a Lowell police officer?

25 A. Yes, as a Lowell police officer and the JTTF.

1 Q. I'm sorry?

2 A. Yes.

3 Q. And in the context of being a JTTF?

4 A. I mean, while I was in the JTTF, yeah.

5 Q. When she called you, did you have a conversation with her?

6 A. Yes.

7 Q. What did she say and what did you say?

8 A. She said that the people were concerned about -- at the  
9 university were concerned about the testimony that  
02:43 10 had -- Mr. Abuzahra had given that day.

11 Q. Did she get more specific about who was concerned?

12 A. She -- I don't know if she got more specific than that.

13 Q. Did she mention that Mr. Abuzahra had testified that he  
14 planned to go to Iraq and engage in fighting?

15 A. No, she didn't mention specifics of his testimony.

16 Q. Did she in any way reference Abuzahra's idea to  
17 assassinate or shoot Condoleezza Rice or John Ashcroft?

18 A. No.

19 MR. CHAKRAVARTY: Object to the characterization, your  
02:44 20 Honor.

21 THE COURT: Well, for these purposes --

22 MR. CHAKRAVARTY: I understand that. I believe that  
23 question was asked for the gallery's purposes, not necessarily  
24 for this inquiry.

25 THE COURT: Well, whatever.

1                   THE WITNESS: No.

2 BY MR. CARNEY:

3 Q. Did she mention that?

4 A. No.

5 Q. Do you recall her mentioning anything about a shopping  
6 mall or a Hanscom Air Force Base?

7 A. I do not.

8 Q. Do you recall her mentioning at all Abuzahra's going to  
9 New Hampshire to get automatic weapons?

02:44 10 A. I do not.

11 Q. Did she identify who were the people who had contacted her  
12 that were upset about Abuzahra coming back to work?

13 A. I believe one of them was -- and I'm not sure if there  
14 were others -- was Patty McCafferty, the vice chancellor,  
15 because she told her -- she told me that she gave her my  
16 number.

17 Q. Remind me who it is you're having this conversation with?

18 A. Lieutenant Melissa Mullen.

19 Q. Did you ever speak to the vice chancellor?

02:45 20 A. Yes, I did.

21 Q. Before or after speaking to the lieutenant?

22 A. After.

23 Q. All right. Can you tell me the rest of your conversation  
24 with the lieutenant?

25 A. Yes, as best as I remember.

1 Q. Can you give me that full name again, please?

2 A. Melissa Mullen.

3 Q. Okay. So, please continue relating that entire  
4 conversation.

5 A. You know, they were concerned that there would be a threat  
6 at the university because of some of the testimony that he gave  
7 that day. So I said that if I knew of a threat, I would tell  
8 her about one. I didn't know of one. I told her I could not  
9 tell her that there was no threat. I don't think I could say  
02:46 10 that.

11 Q. Say that again?

12 A. I said that I could not tell her that there was no threat.  
13 I couldn't tell anybody that somebody's not a threat. I could  
14 only say that I don't know about one; that he had been  
15 cooperative in the investigation and that he had severed -- I  
16 need to take a drink of water -- severed ties with the group of  
17 people he was involved with back in -- sometime in 2004.

18 Q. And why did you tell them all this information -- tell her  
19 all this information?

02:47 20 A. I guess in response to her being concerned that there was  
21 a threat.

22 Q. Did you expect that she would pass on this information to  
23 someone?

24 A. Did I do it because I wanted her to pass it on or did I  
25 think that she would?

1 Q. Did you expect that she would pass that information on to  
2 someone?

3 MR. CHAKRAVARTY: Objection, your Honor.

4 THE COURT: You may answer.

5 THE WITNESS: I believed she would probably pass it on  
6 to somebody, yes.

7 BY MR. CARNEY:

8 Q. And to whom would she pass it on to?

9 A. I don't know, but I would imagine people in the police  
02:47 10 department or faculty at the university.

11 Q. Did the lieutenant mention who specifically had contacted  
12 her?

13 A. She may have, but I don't know who that was.

14 Q. Did she mention the vice chancellor by name?

15 A. Yes, she did. She did mention her by name.

16 Q. So that's one person who called the lieutenant.

17 A. Yeah. I'm not sure that she personally spoke to her or if  
18 somebody relayed it to her. I'm not sure how that took place.  
19 But she told me that the vice chancellor would be calling me.

02:48 20 Q. Did you expect that the lieutenant would relate her  
21 conversation with you to the vice chancellor?

22 A. In some way, yes, whether directly or indirectly.

23 Q. Did you expect that that would have an impact on whether  
24 concerns about Kareem would be satisfied?

25 A. Probably not. They probably wouldn't be satisfied because

1 I couldn't say that he wasn't a threat.

2 Q. Why did you tell those facts to her, to the lieutenant,  
3 that he'd been -- that you couldn't say he was a threat and  
4 other information you told her?

5 A. I couldn't say that he was -- I couldn't say -- you're  
6 saying that I couldn't say that he was not -- or he was -- he  
7 was not a threat?

8 Q. Did you tell her that he had stopped associating with this  
9 other group in 2004?

02:49 10 A. Yes.

11 Q. Why did you tell her that?

12 A. I'm not sure. Those three things are what came to mind  
13 when she asked me that and I told her --

14 Q. Why did you tell her that he stopped associating with the  
15 group in 2004?

16 A. Maybe because I believed that was in the -- that was  
17 already in the public, so it was something that I could tell  
18 her.

19 Q. Did you believe that that would calm her?

02:49 20 MR. CHAKRAVARTY: Objection, your Honor. This  
21 witness's state of mind is not at issue.

22 THE COURT: You may answer it.

23 THE WITNESS: I don't know if that would calm her or  
24 not.

25 BY MR. CARNEY:

1 Q. You told her that he had disavowed his anti-American  
2 views?

3 A. No, I did not say that.

4 Q. Did you ever say that to anyone?

5 A. No.

6 MR. CARNEY: May I have a moment, your Honor, please?

7 (Pause.)

8 Q. What else did you tell her, the lieutenant, besides he'd  
9 been cooperating since 2006, you can't say that he -- that  
02:50 10 there was a threat, and he had no longer associated with people  
11 since 2004? What else did you tell the lieutenant?

12 A. I guess that there was no -- that I didn't know of a  
13 threat.

14 Q. Was there anything else you said to her?

15 A. I'm trying to remember if I told her or the vice  
16 chancellor that he shouldn't talk about his testimony  
17 or -- while he was testifying.

18 Q. Now, why was it that you gave all this information to the  
19 lieutenant?

02:51 20 A. It was in response to her saying that he was a -- they  
21 were concerned that he was a threat.

22 Q. By giving her your opinions or statements in this manner,  
23 you knew you'd be helping Mr. Abuzahra to keep his job,  
24 wouldn't you?

25 A. No.

1 Q. Well, if he were perceived as a threat, he wouldn't keep  
2 his job, would he?

3 A. I don't know.

4 Q. What would you expect?

5 A. I don't know what the rules of them -- how they can hire  
6 and fire people, so I don't know that.

7 Q. Did you feel it was helpful to Mr. Abuzahra to say that he  
8 hadn't associated with the group since 2004?

9 A. I don't know if that was helpful or not.

02:52 10 Q. Did you think it was?

11 A. I don't think I thought about it.

12 Q. Do you think Mr. Abuzahra would view that as helpful, if  
13 that information --

14 MR. CHAKRAVARTY: Objection.

15 THE COURT: Sustained to that.

16 BY MR. CARNEY:

17 Q. -- was conveyed to his employer?

18 THE COURT: Yeah, sustained to that.

19 BY MR. CARNEY:

02:52 20 Q. When you said that he had been cooperating with the  
21 government since 2006, did you expect that that would be  
22 helpful to Mr. Abuzahra?

23 A. Again --

24 MR. CHAKRAVARTY: Objection to what his understanding  
25 of what --

1                   THE COURT: Yeah, sustained.

2                   MR. CARNEY: I'm trying to explore this witness's  
3 state of mind and motivation.

4                   THE COURT: Right. And that's not particularly  
5 relevant.

6 BY MR. CARNEY:

7 Q. Would you think that Mr. Abuzahra would view this as  
8 something helpful for you to say to his employer?

9                   MR. CHAKRAVARTY: He's just rephrasing the same  
02:53 10 question.

11                  THE COURT: Well, not quite, but it's equally  
12 objectionable. Sustained.

13                  MR. CARNEY: Well, I'm trying to establish --

14                  THE COURT: The purpose of this was to find out what  
15 promises or inducements had been made as a matter of fact to  
16 Mr. Abuzahra. We've strayed a little bit as to what might have  
17 been said and so on. I want to focus on what the  
18 communications were, if any.

19                  MR. CARNEY: Okay.

02:53 20 BY MR. CARNEY:

21 Q. Did you have any other discussion on that phone call with  
22 the lieutenant?

23 A. Not that I can remember, no.

24 Q. Did she say anything else to you besides what we've talked  
25 about right here?

1 A. Not that I can remember.

2 Q. Is it fair to say that she was the very first person that  
3 brought up this subject of Kareem Abuzahra's concern about his  
4 employment to you?

5 A. No, she didn't bring up his concern.

6 Q. Who was the first person to contact you?

7 A. You just said that if she brought up Kareem Abuzahra's  
8 concern for his employment. She didn't ask me that.

9 Q. Okay. Then is she the first person you spoke to after  
02:54 10 court recessed on November 28 who brought up Mr. Abuzahra? And  
11 I'm including Mr. Abuzahra himself.

12 A. Yeah, I didn't talk anything about his employment with him  
13 on Monday afternoon.

14 Q. Okay. Was she the first person that spoke to you about  
15 Mr. Abuzahra after his first day of testimony?

16 A. I don't know that. I mean, I couldn't say that for  
17 certain.

18 Q. I'm just trying to establish a chronology. So that the  
19 chronology would be you spoke to the lieutenant?

02:55 20 A. Yes.

21 Q. Then you spoke to the vice chancellor?

22 A. Yes.

23 Q. Then the next day you spoke to Mr. Abuzahra?

24 A. Yes.

25 Q. Okay. So have you completed everything that was discussed

1       in the first call, which was between you and the lieutenant,  
2       Melissa Mullen?

3       A.     Yes, to the best of my recollection. Yes.

4       Q.     When was the next time you had a discussion about  
5       Mr. Abuzahra with anyone?

6       A.     A little later that -- I'm not sure how much longer when  
7       the vice chancellor called. It was on my cell phone. I was in  
8       the office, so I'm not sure if she left a message or not, but I  
9       had her number, so from that somehow, and called her from a  
02:55 10      regular hard line.

11      Q.     Would that have been Monday afternoon?

12      A.     Yes.

13      Q.     November 28th?

14      A.     Yes.

15      Q.     What was the conversation between you and the vice  
16       chancellor?

17      A.     Very similar to that with Lieutenant Mullen. She said  
18       that people -- and I don't know who -- said they were concerned  
19       after reading the -- some tweets, I believe, from the Free  
02:56 20      Tarek site as to what Mr. Abuzahra had testified to.

21      Q.     Did she get more specific about what these concerns were?

22      A.     I think she just said they said that he had testified that  
23       he had done some pretty bad things.

24      Q.     Was it any more specific than "bad things"?

25      A.     Not to -- not that I can remember, no.

1 Q. Was she more specific about whom had contacted her?

2 A. Not that I can remember. I don't remember her saying who  
3 had contacted her. When you say -- about these tweets?

4 Q. Pardon me?

5 A. About the tweets?

6 Q. Who had contacted her about the tweets, for example?

7 A. I don't know.

8 Q. Did she indicate whether it was coming from students,  
9 faculty, staff or outsiders?

02:57 10 A. I don't remember. I would think -- she didn't mention  
11 students that I can remember. I don't know.

12 Q. Did she mention it was one person or more than one person;  
13 in other words, complaints or complaint, concerns or concern?

14 A. I'm not certain. For some reason I think it was more than  
15 one person but...

16 Q. After she said that, what was said next?

17 A. I told her the same things that I told Lieutenant Mullen.

18 Q. Which were what?

19 A. That I couldn't -- if there was a known threat I would  
02:58 20 tell her, you know -- I would have told her, but I didn't -- I  
21 could also not say that he wasn't a threat, that he had -- and  
22 I'm not sure in what order I had said this, but that he had  
23 stopped associating with these people in -- the group he was  
24 involved with in 2004 and that he was cooperating since  
25 sometime in 2006.

1 Q. What did she say in response?

2 A. I'm not sure if she just said there was some -- you know,  
3 at some point in that conversation that there were some bad  
4 things, again, that he had said in the trial. And I said, "I  
5 don't think he could" -- you know, "I can't comment further  
6 with something that -- where there's a witness testifying."

7 Q. Where she brought up bad things for a second time --

8 A. I'm not sure if that was the second time.

9 Q. -- the second time did she bring it up with more  
02:59 10 specificity than she did the first time?

11 A. Not that I recall at all.

12 Q. Did she give you any indication that she had been in touch  
13 with Mr. Abuzahra?

14 A. No.

15 Q. Did she tell you whether or not she had left a message for  
16 him to contact her?

17 A. I don't believe so.

18 Q. Did she tell you whether she planned to meet with  
19 Mr. Abuzahra at some point?

02:59 20 A. I don't believe so.

21 Q. Did you tell her anything else after this, during this  
22 phone call?

23 A. Not that I can recall, no.

24 Q. Did you refer her to the United States Attorney's Office?

25 A. No.

1 Q. Did you tell her if there's to be any future contact, how  
2 that should occur?

3 A. I did not.

4 Q. Was there anything else of significance in this  
5 conversation with the vice chancellor?

6 A. I think other than that I couldn't tell her anything else.

7 Q. After these two conversations with the lieutenant and the  
8 vice chancellor, did you report this to anyone in your office?

9 A. Yes.

03:00 10 Q. To whom did you speak in your office?

11 A. I believe I talked to a number of people, but I'm pretty  
12 sure it was that day that I talked to the supervisor, Jamie  
13 Marinelli.

14 Q. Is he here now?

15 A. He is, yes.

16 MR. CARNEY: I would ask that he be asked to step out.

17 THE COURT: Yes, he should leave the room.

18 (James Marinelli is sequestered.)

19 MR. CARNEY: Could we generally ask any of the FBI who  
03:01 20 Mr. Daly might have spoken to to step out?

21 MR. CHAKRAVARTY: Your Honor, the government doesn't  
22 mind sequestration, although what happened within the FBI after  
23 the fact cannot possibly bear on the issue of what promises --

24 THE COURT: Well, we certainly can't determine the  
25 issue, that's for sure. We are taking a little bit of time

1 getting to the point here, Mr. Carney.

2 MR. CARNEY: I'll speed it up.

3 THE COURT: Again, the crux of this is Abuzahra's  
4 appreciation of what the government might be doing for him.  
5 And the tact that you've taken is to find that from the  
6 communicator's side as opposed to the person communicated to,  
7 but let's get to the communications.

8 BY MR. CARNEY:

9 Q. So who's the person that you just mentioned that you spoke  
03:02 10 to?

11 A. My supervisor, Jamie Marinelli.

12 Q. Could you say that?

13 A. James Marinelli. James.

14 Q. Marinelli?

15 A. Yes.

16 Q. And what is his title?

17 A. I believe he's the acting supervisory special agent for  
18 the squad.

19 Q. Did you relate to him your conversations?

03:02 20 A. Yes.

21 Q. And what did he say?

22 MR. CHAKRAVARTY: Your Honor, what he said is not  
23 relevant to this inquiry.

24 THE COURT: Yeah. Sustained.

25 BY MR. CARNEY:

1 Q. Did he tell you what he was going to do with the  
2 information?

3 A. I don't think that he told me he was going to do anything  
4 with it. I mean, I don't remember him saying he was going to  
5 do anything with it.

6 Q. Did you have any conversation with anyone in the United  
7 States Attorney's Office?

8 A. Yes.

9 Q. That day?

03:03 10 A. Well, sometime later that night; yes.

11 Q. And who did you speak to?

12 A. All three of the -- Mr. Auerhahn, Mr. Chakravarty, and I  
13 believe Mr. Groharing were over at our office later that night.

14 Q. Did they come to your office, I take it?

15 A. Yes.

16 Q. Was that unusual?

17 A. No. They had to review some documents over there.

18 Q. And what was your conversation with the prosecutors?

19 A. I told them --

03:03 20 Q. And just to set the date, this is November 28, the first  
21 day of Abuzahra's testimony?

22 A. Yes.

23 MR. CHAKRAVARTY: Your Honor, our conversations, what  
24 we knew, when we knew it, only bears on the issue of promises,  
25 rewards or inducements, and that has not yet been exposed by

1       this inquiry. I think that's what we need to focus on.

2           THE COURT: Yeah, I think we should get --

3           MR. CARNEY: Since the government waited until  
4 December 6th to notify me, I'm curious why I didn't get a call  
5 that night --

6           THE COURT: Yeah.

7           MR. CARNEY: -- or the next morning.

8           THE COURT: There may be some interesting questions  
9 there, but they're secondary -- or at least subsequent to the  
03:04 10 main event, which is what might have been said to the witness.  
11 So let's get to that.

12           MR. CARNEY: But I need to focus on this conversation  
13 with the government because it may be necessary for me to call  
14 the government prosecutors.

15           THE COURT: Well, that will depend on what got said to  
16 the witness, though. That's why I want to get to the  
17 main -- and then maybe work back to some of this if it seems  
18 important.

19           MR. CARNEY: Well, respectfully, your Honor, I'm  
03:04 20 trying to --

21           THE COURT: Well, if nothing ever got said to the  
22 witness and he wasn't influenced, then nothing else matters.  
23 If he was, then maybe something else matters.

24 BY MR. CARNEY:

25 Q. What was the conversation with the prosecutors on November

1 28th?

2 MR. CHAKRAVARTY: Objection, your Honor.

3 THE COURT: Sustained.

4 BY MR. CARNEY:

5 Q. Did you tell them what had occurred?

6 MR. CHAKRAVARTY: Objection, your Honor.

7 THE COURT: Sustained.

8 BY MR. CARNEY:

9 Q. Did they indicate to you what should be done?

03:05 10 MR. CHAKRAVARTY: Same objection.

11 THE COURT: Sustained.

12 BY MR. CARNEY:

13 Q. When was the next time you had a conversation with anyone?

14 A. I believe it was the next morning.

15 Q. And was this when you were giving him a ride again?

16 A. Yes.

17 Q. Now, you had already told him the previous day about your  
18 conversation with the vice chancellor, right?

19 A. No, I think we're on Tuesday, right?

03:05 20 Q. We're now on Tuesday?

21 A. Well, you said the next day after having the conversation.

22 Q. Right. I'm focused on Tuesday. You had already  
23 told -- oh, no. On Tuesday. You're correct.

24 Did you give him a ride on Wednesday?

25 A. Yes.

1 Q. So that the previous day you had told him about your  
2 conversation with the vice chancellor, right?

3 A. Yes.

4 Q. And that conversation you had related to the prosecutors  
5 on Tuesday, November 29th, right?

6 A. I don't know if I relayed that to them. I don't remember  
7 relaying it to them.

8 Q. You don't remember relaying that conversation to them?

9 A. No.

03:06 10 Q. What conversation did you have with Abuzahra on Wednesday,  
11 November 30th?

12 A. Nothing that I can, you know, remember.

13 Q. Did he bring up the subject again?

14 A. He may have brought up the subject that he was concerned  
15 about what the people at work thought about him again.

16 Q. And what specifically did he say to have you draw that  
17 conclusion?

18 A. Maybe that he was concerned about what the people at work  
19 thought about him. But, you know, I don't know how he said it.

03:07 20 Q. What did you say in response?

21 A. I don't think at that time I said anything.

22 Q. Did you try to settle his nerves?

23 A. No. I mean, I could see why people would be concerned at  
24 work with what he had said, so...

25 Q. Is that what you said?

1 A. I don't think I told him that.

2 Q. Well, what did you say to kind of calm him down? This was  
3 prior to his third day of testimony, right?

4 A. This was prior to his third day of testimony, yes.

5 Q. Did you tell him that you'd spoken to the lieutenant?

6 A. On Tuesday.

7 Q. What's that?

8 A. On Tuesday I told him that.

9 Q. And --

03:07 10 A. I believe it was Tuesday. I mean, I'm pretty certain it  
11 was Tuesday.

12 Q. Did you tell him on Wednesday that you had spoken to  
13 anybody else including the prosecutors?

14 A. No. No.

15 Q. Did you say anything else to kind of calm him down about  
16 his job?

17 A. Not that I can remember, no.

18 Q. Did you tell him that you didn't think anything would  
19 happen?

03:08 20 A. No. That wouldn't be true because I didn't know what  
21 could or couldn't happen to him.

22 Q. Did you write a report on this?

23 A. No.

24 Q. Why not?

25 A. I didn't think I was required to.

1 Q. When are you required to write a report?

2 MR. CHAKRAVARTY: Objection, your Honor.

3 THE COURT: You may answer that.

4 THE WITNESS: I guess if I interview somebody or  
5 something investigative is done or something like that.

6 BY MR. CARNEY:

7 Q. Did you have any other conversation with him about his  
8 work or your conversations with others on that Wednesday?

9 A. On that Wednesday after court with -- again, with  
03:09 10 Lieutenant Mullen.

11 Q. What did you say to him?

12 A. Her.

13 Q. Her. I'm sorry.

14 A. She had left a message to call her, so I returned her  
15 call.

16 Q. And what did the conversation focus on?

17 A. She said that -- at this point she did say that his job  
18 was in jeopardy, and I'm not sure what she said exactly. That  
19 I think she wanted to know if there was anything that he did in  
03:10 20 relation to this at the university.

21 Q. And what did you say?

22 A. I said that I could not discuss it and, you know, I'm a  
23 witness in this case as well so I shouldn't -- you know, I  
24 couldn't comment.

25 Q. Did she elaborate on why she thought his job was in

1 jeopardy?

2 A. I don't remember her saying why. I think I may have just  
3 assumed because of what had -- you know, what they had  
4 previously said that they were concerned about what he had  
5 testified to.

6 Q. Did you presume that she would speak to anyone after her  
7 conversation with you?

8 A. She may have, but I don't think I thought about it.

9 Q. Did she give you any indication of that?

03:10 10 A. I think she probably would have had to tell whoever had  
11 asked her to call me.

12 Q. Did you ever have at any time any contact during this  
13 period with Mr. Abuzahra's attorney?

14 A. No.

15 Q. Did you know who it was?

16 A. I know who his attorney was when we started this  
17 investigation.

18 Q. Who was that?

19 A. It was Brad Bailey.

03:11 20 Q. Did you know that he continued to be his attorney?

21 A. I think I probably knew that, that he --

22 Q. Were you present when he came to move to quash a subpoena  
23 that we had given his client?

24 A. Yes, I was. Yes.

25 Q. So you knew that before Mr. Abuzahra even testified that

1 Attorney Bailey was still his attorney?

2 A. Up to that point, yes. If he continued to represent him,  
3 I mean...

4 Q. And that motion to quash occurred on November 28th, is  
5 that right, before he testified? Please don't look at the  
6 lawyers.

7 A. I'm looking over at you, sir. I believe that's correct,  
8 that it was before he testified. Yes, it was.

9 Q. Did you ever hear from Attorney Bailey on this subject?

03:12 10 A. No. No.

11 Q. Did you give Mr. Abuzahra a ride the fourth day of his  
12 testimony?

13 A. Yes.

14 Q. And was there any conversation about his job and his  
15 concerns at that point?

16 A. It was either that day or the day before he had said he  
17 had gotten an email from a female that worked at the college  
18 who said she was supportive of, you know, "Jeez, it must be" --  
19 "I feel for you being under scrutiny, you know, in this  
03:12 20 situation." You know, I don't think she said -- I think she  
21 was just kind of generally supportive.

22 MR. CARNEY: May I have a moment, please, your Honor?

23 (Pause.)

24 Q. Did you ever tell Mr. Abuzahra that there was nothing you  
25 could do for him, but when the trial was over if a call was to

1       be made to the authorities at UMass Lowell, it would be made by  
2       the U.S. Attorney's Office?

3       A.     I never told him that. I don't believe I ever told him  
4       that.

5       Q.     Is your memory exhausted about what you said?

6       A.     I don't believe I ever said that. I never told him that.

7                    MR. CHAKRAVARTY: Your Honor, to clarify, I'll hand  
8       these up to the Court. The government made two email  
9       disclosures to the defense that prompted this hearing. This  
03:14 10      witness did not make these statements, but the other witness  
11     did. But for your Honor's benefit as well, so that you have  
12     what we have, I would offer these as an exhibit.

13                  MR. CARNEY: Fine, your Honor.

14                  THE COURT: Do you have the ID numbers?

15                  MR. CHAKRAVARTY: These don't have to be trial  
16       exhibits.

17                  THE COURT: The hearing is part of the trial, so I  
18       don't care if you start a different schema -- give it a  
19       five-digit number or whatever you want to do, I don't care --  
03:14 20      they should be somehow identifiable for the record, that's all.

21                  MR. CARNEY: May I proceed?

22                  THE COURT: Go ahead.

23                  MR. CARNEY: Oh, there's one other email that I think  
24       would be relevant --

25                  (Pause.)

1                   MR. CARNEY: Your Honor, on your copy there should be  
2 a third email that Mr. Chakravarty was responding to, from me  
3 to him? Do you have that copy?

4                   THE COURT: I seem to have one from Mr. Chakravarty to  
5 you of December 6th. I don't know whether this is all the  
6 same. No. Then there's one December 9th with a reply. Is  
7 there something --

8                   MR. CARNEY: Do you have my email to him on December  
9 9th at 4 p.m.?

03:15 10           THE COURT: Yes.

11                  MR. CARNEY: And his response at 4:17?

12                  THE COURT: Yes.

13                  MR. CARNEY: All right. That's what I wondered, your  
14 Honor. Thank you.

15 BY MR. CARNEY:

16 Q. On the fourth day when you drove him to court, did you  
17 have any further conversation with him about it?

18 A. Nothing that -- about his job, you're talking about?

19 Q. About his job or any concerns he may have had.

03:16 20 A. Not that I can remember. I may have, but I can't say that  
21 I did.

22                  MR. CARNEY: Thank you, Mr. Daly.

23                  That's what I have, your Honor, for this witness.

24                  THE COURT: Any questions?

25                  MR. CHAKRAVARTY: I don't think I have anything for

1       this witness, your Honor.

2           THE COURT: All right, sir. Thank you. You may step  
3       down.

4           THE WITNESS: Thank you.

5           (The witness is excused.)

6           MR. CARNEY: Heidi Williams, please?

7           THE CLERK: We're going to make the first email  
8       VD-001 --

9           THE COURT: "VD" for voir dire.

03:17 10          THE CLERK: -- marked for identification, and VD-002  
11       marked for identification.

12           (Government Exhibit Nos. VD-001 and VD-002 marked for  
13       identification.)

14                   HEIDI WILLIAMS, duly sworn

15           THE CLERK: Please be seated. State your name and  
16       spell your name for the record, keep your voice up and speak  
17       into the mic so everyone can hear you.

18           THE WITNESS: Heidi Williams, W-I-L-L-I-A-M-S.

19                   VOIR DIRE EXAMINATION

03:18 20          BY MR. CARNEY:

21          Q. How are you employed, ma'am?

22          A. I am a special agent with the FBI.

23          Q. How long have you been in that position?

24          A. Seven and a half years.

25          Q. You're a case agent in the case at bar?

1 A. Yes.

2 Q. You know the witness Kareem Abuzahra?

3 A. I do.

4 Q. And you recall that his first day of testimony was  
5 November 28th of this year?

6 A. Yes.

7 Q. Were you involved in giving him a ride to court?

8 A. No.

9 Q. Was that exclusively, to your knowledge, Mr. Daly?

03:18 10 A. Yes.

11 Q. Did you learn that Mr. Abuzahra had expressed concern  
12 concerning his job?

13 A. Yes, I did.

14 Q. And I'm focusing on a period after he testified that first  
15 day.

16 A. Yes.

17 Q. When did you learn it?

18 A. That he expressed concern?

19 Q. Yes.

03:19 20 A. Do you mean that he expressed concern that he would lose  
21 his job or concern that people at work thought negatively of  
22 him?

23 Q. Both.

24 A. At first he only expressed that people at work -- he was  
25 worried what people at work thought of him because he received

1 several phone calls from people at work. So that was either  
2 Monday or Tuesday I learned that.

3 Q. Was that the first conversation you had with him about  
4 this?

5 A. Yes.

6 Q. Where did that take place?

7 A. I don't remember if it happened -- if he called Monday  
8 night or if I spoke to him prior to his testimony Tuesday  
9 morning.

03:19 10 Q. When he said he received several phone calls, did he  
11 describe the content of those phone calls?

12 A. Broadly.

13 Q. And what specifically did he say?

14 A. That he received a couple of phone calls from people at  
15 work who were expressing surprise at the things that he had  
16 said in court.

17 Q. And to the best of your memory, that was either Monday  
18 evening by telephone or Tuesday morning in court?

19 A. Correct.

03:20 20 Q. Where would you meet him Tuesday morning?

21 A. Well, he was waiting upstairs -- actually, no. Wait. I  
22 correct that. I think that Sergeant Daly brought him to the  
23 FBI office, where we transported him over to court.

24 Q. Was your conversation, then, at the FBI office or in the  
25 car or in the courthouse?

1 A. He never actually came up into the office. There's a  
2 Finagle Bagel down in the lobby where we would wait. So it may  
3 have been in the Finagle Bagel while we were waiting to come  
4 over here.

5 Q. What did you say in response to his comment?

6 A. I don't remember the words that I used. This was not a  
7 new concern of his. Since Mr. Mehanna was arrested for the  
8 first time and the complaint became public, he'd expressed  
9 concerns because people in the community, the Muslim community  
03:21 10 in particular, had called him a traitor and they were  
11 ostracizing his wife and his parents. So it wasn't a new  
12 concern that, you know, people were saying negative things  
13 about him.

14 Q. Was it a new concern that it was being said at work?

15 A. Yes.

16 Q. And was that in reaction, did he say, to the publicity  
17 covering his first day's testimony?

18 A. Can you repeat that?

19 Q. Was the concern based on his testimony on the first day?

03:21 20 A. Yes.

21 Q. You said that he also expressed a concern at some point  
22 about whether he would lose his job because of what his  
23 superiors would say or think.

24 A. Yes.

25 Q. Was that expressed on Tuesday morning also?

1 A. No.

2 Q. When was that first mentioned?

3 A. I don't think he became aware of that fully until the  
4 following Monday. So he finished testifying on Thursday. It  
5 would have been the Monday after that.

6 Q. So he wouldn't have been aware that Tuesday of concerns  
7 expressed by a lieutenant with the Lowell campus police?

8 A. He didn't express them to me.

9 Q. Or he wouldn't have been concerned about having a call  
03:22 10 made by the vice chancellor of the University of Massachusetts  
11 at Lowell?

12 A. Again, I think he thought -- I don't want to say what he  
13 thought, but that wasn't expressed to me.

14 Q. Were you aware that the lieutenant and the vice chancellor  
15 had talked to Tom Daly?

16 A. Yes.

17 Q. And that Tom Daly had spoken to Kareem about this on  
18 November 29th?

19 A. Yes.

03:22 20 Q. So Kareem was aware of these phone calls from the  
21 lieutenant and the vice chancellor?

22 A. He didn't express that much concern -- or that -- any  
23 concern about that to me. He was concerned about what his  
24 coworkers thought of him.

25 Q. When did he first bring up the concern about the job?

1 A. I think he took it a little more seriously -- and again, I  
2 knew a lot more information than he did about his job status,  
3 but I think he took it more seriously on Wednesday afternoon.  
4 That's when he learned that he would have to go in for a  
5 meeting prior to reporting to work on Monday morning  
6 with -- and I don't know if at that time that he said it was a  
7 director of human resources or if it was the vice chancellor,  
8 but there was some administrative meeting that would have to be  
9 held prior to his showing up for work on Monday. So I think he  
03:23 10 was a little bit more concerned. It evolved at that point.

11 Q. Why did you draw the conclusion that he was a little more  
12 concerned?

13 A. Well, the nature of his concern changed from --

14 Q. Did he seem upset or nervous in describing this?

15 A. I mean, you've met him. He always seems a little -- I  
16 guess an agitated level. He's also at that, you know, elevated  
17 level. So it didn't seem out of character.

18 Q. But he was upset, right, about the possible impact that  
19 his testimony could have on his job, right?

03:24 20 A. Again, the primary concern was still how to socialize with  
21 people at work, at least when he spoke to me.

22 Q. Did he ask you to call the university?

23 A. No.

24 Q. Did you tell him whether you would call the university?

25 A. No.

1 Q. Or that the bureau would call the university?

2 A. No.

3 Q. Did you indicate that the U.S. Attorney would be willing  
4 to call the university?

5 A. I indicated that on the Monday after he finished  
6 testifying. I didn't say that they would be willing; I said in  
7 the context of a -- he said that he felt like he was going to  
8 be terminated within a week or two. And I said, "Is there any  
9 way that that decision could be postponed because nothing can  
03:25 10 be done on your behalf -- if anything could be done, it  
11 wouldn't be able to be done until after trial." And I have no  
12 idea what could have been done, but I said at that point if the  
13 U.S. Attorney's Office could make a call, it couldn't come for  
14 several weeks.

15 Q. Well, you knew what could be done, right?

16 A. I still have no idea what could be done.

17 Q. You didn't think that the U.S. Attorney's Office could  
18 call UMass Lowell and speak on his behalf?

19 A. I don't know if they can or can't.

03:25 20 Q. You've never had that experience?

21 A. No.

22 Q. But you told him that if there was going to be a call made  
23 by the U.S. Attorney's Office, it would have to be after the  
24 trial was done, correct?

25 A. I told him if a call could be made, it would have to be

1 after the trial was done, yes.

2 Q. Which, of course, means after his testimony was concluded?

3 A. Well, his testimony was already concluded when I told him  
4 that. That would be the following Monday.

5 Q. Did you have any contact with anyone at UMass Lowell?

6 A. No.

7 Q. What was the first time you had a discussion with anyone  
8 from the U.S. Attorney's Office about this?

9 A. Monday, November 28th.

03:26 10 Q. The first day of his testimony?

11 A. Yes.

12 Q. And what did you tell them?

13 A. What I told you.

14 MR. CHAKRAVARTY: Objection, your Honor. Same  
15 objections as --

16 THE COURT: Well, the answer she gave can stand.

17 BY MR. CARNEY:

18 Q. And what did they tell you that they could do for Kareem?

19 A. At that time it wasn't discussed.

03:26 20 Q. Not a thing was said?

21 A. I mean, we weren't discussing what we could do or what we  
22 couldn't do. At that point he was concerned socially what was  
23 happening to him. I'm not aware that the U.S. Attorney's  
24 Office or the FBI could go out in the community and tell them  
25 to behave accordingly.

1                   MR. CARNEY: All right. Thank you, Agent. That's all  
2 I have.

3                   THE COURT: Any questions?

4                   MR. CHAKRAVARTY: No.

5                   THE COURT: Thank you. You may step down, Agent.

6                   (The witness is excused.)

7                   THE COURT: I'm sorry. Anything else?

8                   MR. CARNEY: Not from these witnesses, your Honor.

9                   I'm waiting to hear back from Martin Meehan, whom I've called  
03:27 10 to ask --

11                  THE COURT: Well, I think I indicated yesterday that  
12 that was beyond the scope of what I was interested in hearing.  
13 As I said repeatedly, the question is what might have affected  
14 the mind of the witness as he testified by way of an assurance  
15 of benefit from anybody on the government's side.

16                  MR. CARNEY: I think your Honor described it too  
17 narrowly. It's not assurance but expectation, and there's a  
18 huge difference in terms of --

19                  THE COURT: Well, it depends on -- I agree with that.  
03:27 20 It could depend on how you seek to establish the point and  
21 through which witness. I mean, he could testify about  
22 expectation; they could testify about assurance. So it may  
23 depend on which direction you're looking through the tube on.

24                  MR. CARNEY: All right. For now I'm going to think  
25 about this and I'll report back to you tomorrow.

1                   THE COURT: Thank you. I think that's a good idea all  
2 around.

3                   MR. CARNEY: But I would like to keep both Williams  
4 and Daly onboard in case we call them as witnesses.

5                   THE COURT: All right. Well, they're here, I think,  
6 every day anyway.

7                   MR. CHAKRAVARTY: And they'll continue to be here.  
8 The government's position your Honor knows, and we will  
9 continue to think about it but --

03:28 10           THE COURT: Consider them potential witnesses with  
11 respect to this.

12                   MR. CHAKRAVARTY: You're telling us to?

13                   THE COURT: Yes. Right.

14                   MR. CHAKRAVARTY: All right. That being said --

15                   THE COURT: For whatever that means. They're not on  
16 the stand now.

17                   MR. CHAKRAVARTY: Right. And our position is that  
18 they, neither Mr. Abuzahra, should necessarily be called based  
19 on this testimony; however, if the defense has a remedy, it  
03:28 20 would be through, obviously, calling the witness Abuzahra,  
21 which the government would not stand in the way of their  
22 ability, as they have the ability to do, obviously, to call the  
23 witness.

24                   With regards to scheduling, your Honor, are we going  
25 to go right into Sageman?

1                   THE COURT: Well, we don't have much time left. I  
2 don't know how long -- but again, I don't know how much time we  
3 need to do this. I mean, again, I'm regarding the applicable  
4 disclosure, the October 18th so-called supplemental disclosure.  
5 Again, as I think we've discussed, I think there's a good bit  
6 of that which we have, I think, by consensus agreed is not  
7 going to be a part of the evidence. I believe indicators and  
8 prediction and so on.

9                   MR. GROHARING: I think it might be helpful, your  
03:29 10 Honor -- that seems to be a very large portion of what -- the  
11 opinion the defense was going to elicit from Dr. Sageman.  
12 Perhaps if the defense can spell out what's left in  
13 crystal-clear terms --

14                   THE COURT: Well, let me --

15                   MR. GROHARING: -- it would form our discussion a  
16 little bit.

17                   THE COURT: Let me try it this way: Let me tell you  
18 by looking at this what is okay and what may be debatable and  
19 so on. And we can go paragraph by paragraph, if you have the  
03:30 20 document.

21                   MS. BASSIL: I do.

22                   THE COURT: First of all, the first paragraph is about  
23 CV and background. That's, I assume, unremarkable, although  
24 the government has some objection to, I guess, saying whether  
25 he has a clearance or something?

1                   MR. GROHARING: Yes, your Honor. And we have a motion  
2 pending in that regard.

3                   THE COURT: Right. What's the harm in him saying  
4 that?

5                   MR. GROHARING: Well, the argument is that he has  
6 access to additional information he's not testifying about  
7 here --

8                   THE COURT: By the way, is he here?

9                   MS. BASSIL: Yes, your Honor.

03:30 10           THE COURT: He should step out.

11                  MS. BASSIL: He did just step out.

12                  THE COURT: Or maybe he just did. He just did. Okay.  
13 All right?

14                  MR. GROHARING: And the defense alluded to this during  
15 Mr. Kohlmann's testimony, but the argument is that he has  
16 access to classified information and that he viewed that  
17 information in some way to corroborate his findings.

18                  THE COURT: And he won't be able to refer to it here,  
19 is what you're --

03:31 20           MR. GROHARING: We don't even know what it is.

21                  THE COURT: Is he relying on anything?

22                  MS. BASSIL: Here's the story, your Honor.

23                  THE COURT: That is specific, as opposed to general  
24 information --

25                  MS. BASSIL: Right. It's not specific. What he would

1 testify to is -- you know, he does certain studies, he has a  
2 lot of thoughts and hypotheses, and they're formed by many  
3 things. I mean, he studied, you know, political social  
4 movements. He has access to classified information; he uses it  
5 to inform himself, test his hypotheses.

6 He also will testify that classified information is  
7 useful and that the idea that it is useless, which is what  
8 Mr. Kohlmann said, is frankly absurd. He won't go into what it  
9 is, but he will say that everything informs his opinions.  
03:32 10 Everything. His 33 years, his years as a forensic  
11 psychiatrist, everything.

12 THE COURT: Well, I guess at some level of generality,  
13 if it is just a part of his background, it's okay. To the  
14 extent it implies that he's relying on something the jurors  
15 won't see --

16 MS. BASSIL: No.

17 THE COURT: -- as support, then I think that it would  
18 be --

19 MR. GROHARING: Why else would it be relevant, your  
03:32 20 Honor?

21 THE COURT: Just part of his general experience?

22 MS. BASSIL: Right. It's also relevant because --

23 THE COURT: Perhaps acceptance by others as qualified.

24 MR. GROHARING: The only reason that Mr. Kohlmann  
25 testified to it was because on cross-examination Mr. Carney

1       asked him about it with reference to --

2           THE COURT: Well, as long as it's very general and  
3       it's not emphasized and it's not argued --

4           MS. BASSIL: That's correct.

5           THE COURT: -- as particular support for his opinions  
6       here --

7           MS. BASSIL: It won't be.

8           THE COURT: -- then I think it's just general  
9       background, can be done.

03:32 10           MR. GROHARING: And we'll get into it a little bit  
11       more later, but I think that's part of the problem, is we don't  
12       know what he's relying on to support his opinions. To the  
13       extent he's relying on any of this, we should have access to it  
14       so we could test those opinions.

15           THE COURT: Okay. The next paragraph is -- I mean,  
16       there's some --

17           MS. BASSIL: Yeah. He's not going to testify --

18           THE COURT: I don't mean to be a critic here, but  
19       there's some meat and there's some non-meat, I guess.

03:33 20           MS. BASSIL: My summarization of that paragraph, your  
21       Honor, is he will talk about al Qa'ida.

22           THE COURT: He can talk about al Qa'ida, its  
23       structure, its lack of top-down, all of that; that's fine.

24           MS. BASSIL: That's basically what --

25           THE COURT: That's the same area as -- I guess he can

1 vouch for his books as part of his background.

2                   The next topic -- the topic sentence of the next  
3 paragraph is he will explain how terrorism networks have  
4 evolved since 9/11. As a topic that seems okay. The balance  
5 of the paragraph, however, begins to get into indicators and  
6 such, which I think is not permitted, or not even offered, I  
7 guess. So I don't know how much of that paragraph is intended,  
8 but the general topic of how terrorism networks have evolved, I  
9 guess, assuming his qualification, which I do, he will be  
03:34 10 allowed to say.

11                  I have to say, I think most of the rest of it is about  
12 predictors. Well, let me slow down on that. Let me -- through  
13 page 9 -- the first full paragraph on page 9 -- and then there  
14 is some of -- actually, this sounds a little bit like  
15 Dr. Fadel's testimony, talking about jihad as a collective  
16 duty.

17                  MS. BASSIL: He's not going to go over that.

18                  THE COURT: So that paragraph, the near enemy, the far  
19 enemy, we've had a good bit of that.

03:34 20                  MS. BASSIL: No. He's going to talk about Abdullah  
21 Azzam, but he's not really going to go into any detail about  
22 things that have already been talked about.

23                  THE COURT: All right. He can talk about Azzam as a  
24 historical matter and whatever. Substantive matter, I guess.

25                  MS. BASSIL: Right.

1                   THE COURT: The next paragraph, the way it's phrased  
2 here, it's an opinion about the defendant specifically, and  
3 we've generally been excluding those opinions. I don't know  
4 whether that's an issue.

5                   MS. BASSIL: I'm kind of lost on what page you're on.

6                   THE COURT: I just flipped from 9 to 10.

7                   MS. BASSIL: Okay.

8                   THE COURT: I don't know what the first paragraph  
9 means, but it looks pretty fuzzy to me. The next paragraph,  
03:35 10 talking about the internet and its characteristics.

11                  MR. GROHARING: We want to just flush that out a  
12 little bit. This idea of protest being used by a sociologist,  
13 the defendant, and --

14                  MS. BASSIL: Yes.

15                  THE COURT: I didn't think he was a sociologist.

16                  MS. BASSIL: Oh, yes, he is. He has a Ph.D. in  
17 sociology.

18                  THE COURT: I thought he was offered as a  
19 counterterrorism expert.

03:36 20            MS. BASSIL: And part of that includes his Ph.D. in  
21 sociology.

22                  THE COURT: Well, what --

23                  MS. BASSIL: That's part of what his counterterrorism  
24 work is. That's the whole premise --

25                  THE COURT: Okay. Well, what's the sociological

1                   opinion?

2                   MS. BASSIL: The sociological opinion -- he won't talk  
3                   about the defendant. He will talk about the fact that there  
4                   have been social protest movements throughout history and in  
5                   the United States, and that what can happen is a splinter -- a  
6                   group can splinter off and become violent, and that's what he  
7                   studies.

8                   MR. GROHARING: But this is the blob that he's talking  
9                   about.

03:36 10           MS. BASSIL: I don't see why he can't talk about that.  
11                  This is his study. This is what he does. This is his theory  
12                  on counterterrorism, which has been accepted and adopted. It's  
13                  in Army regulations. He lectures on this every --

14                  MR. GROHARING: That's not accurate, your Honor. I  
15                  would like to flush out Dr. Sageman if he is going to be  
16                  allowed to testify about this.

17                  THE COURT: Yeah, I doubt it. I think this  
18                  is -- first of all, I'm not -- well -- I'm not sure it's  
19                  specialized knowledge.

03:37 20           MS. BASSIL: Well, no --

21                  THE COURT: One might note that there was a peaceful  
22                  social protest movement about the Vietnam, for example, a  
23                  favorite topic of Mr. Carney's, and that there were some fringe  
24                  elements who -- like the Weather Underground, who were violent,  
25                  okay?

1 MS. BASSIL: Correct.

2 THE COURT: That's sort of common. I don't know that  
3 that's specialized knowledge.

4 MS. BASSIL: No, but it is specialized knowledge as  
5 it's applied to terrorism. He was the first person to do this.  
6 He was the first person to write this up. He was the first  
7 person to talk about this. And he did it by -- look, he spent  
8 the last ten years trying to isolate and -- you know, trying to  
9 isolate who are people who are going to become operatives.

03:37 10 This is what he does.

11 THE COURT: No, but this is the indicators business.

12 MS. BASSIL: No, I know. No, I'm not saying that.  
13 But I'm just saying from his background. And based on that he  
14 has come up with a theory, and his theory is, you know, related  
15 to -- his theory is related to things like forums, chat forums,  
16 and so forth and so on. I mean, he has looked at what he calls  
17 sort of a social discourse of community, all right? And then  
18 he's going to explain that from that there is a small  
19 percentage of people who then can become violent or can become  
03:38 20 terrorists.

21 This is in direct contradiction to what Mr. Kohlmann  
22 talks about, that people watch videos or people are connected  
23 on the internet, and then they call up somebody and the next  
24 thing you know they're in Bagdad. So Dr. Sageman will talk  
25 about that this is not the common occurrence or the manner in

1 which Mr. Kohlmann testified to. This is part of his theory.  
2 He's developed it over ten years. He's written a book on it.  
3 I don't see why it wouldn't come in.

4 THE COURT: Can you show me the theory in the  
5 disclosure?

6 MS. BASSIL: Yes.

7 MR. GROHARING: It's the blobs.

8 MS. BASSIL: Yes. "He will testify about how the  
9 internet" --

03:39 10 THE COURT: I think that's what I expected. That's  
11 why I asked the question.

12 MS. BASSIL: It starts on page 7 -- the bottom of page  
13 7 -- "Terrorism does not emerge out of a vacuum" --

14 THE COURT: Right. That is the blob.

15 MS. BASSIL: -- it goes through 8, and it goes to  
16 page 9.

17 MR. GROHARING: So notwithstanding the events --

18 THE COURT: Out.

19 MS. BASSIL: I'm sorry, your Honor?

03:39 20 THE COURT: Out.

21 MS. BASSIL: Well, your Honor --

22 THE COURT: That's exactly what I was referring to  
23 when we flipped ahead. Beginning with the bottom paragraph on  
24 7 up to the -- we got to the top, you know, run-over paragraph  
25 on page 9, and then I turned to the --

1           MS. BASSIL: Will he be allowed to talk about, you  
2 know, protest social movements?

3           THE COURT: Well --

4           MS. BASSIL: -- as opposed to terrorism?

5           MR. GROHARING: What would be the relevance of that,  
6 your Honor?

7           THE COURT: One, I'm not sure of the relevance. As a  
8 general matter, I'm not sure that it's, as I've said,  
9 specialized knowledge if he's just going to use some well-known  
03:40 10 examples.

11          MS. BASSIL: He can give you expert examples. He can  
12 give you well-known examples. He can give you anything you  
13 want.

14          THE COURT: But the template is there are movements  
15 involving lots of people, some of whom turn violent and you  
16 could illustrate it with the Vietnam protest, you can  
17 illustrate it with the Abolitionists, you can illustrate it  
18 with the French Revolution. You could illustrate it with lots  
19 of things. I don't know how that adds to the jury's  
03:40 20 understanding about the issues in the case.

21          MS. BASSIL: I think it adds a lot to -- I think it  
22 adds a lot for this reason: The government, quite frankly, has  
23 done the best they could to sort of frighten the jury with  
24 picture after picture and video after video and implying that  
25 terrorism is just around the corner. What Dr. Sageman can do

1       is put this in a valid historical and sociological context so  
2       that this is not unique, this is not terrorism is about to  
3       strike again. He can put this in an appropriate historical  
4       context.

5                  One of the things that has come up in this case is  
6       that there is never -- there's not context. The government  
7       throws stuff on from the client's computer. It turns out  
8       thumbnails are in inactive space. That's the context. There's  
9       been a lot of issues like that where there's no context. What  
03:41 10      Dr. Sageman will provide, like Dr. Fadel did, like Dr. Marsh  
11     did, is context. And I think that that is beyond what an  
12     average juror would know.

13               THE COURT: Well, okay. I'm not persuaded. So the  
14       substance, as reflected, and from the bottom of page 7 to the  
15       top of page 9, would be excluded. And I think --

16               MS. BASSIL: He's not going to talk about Mr. Mehanna.

17               THE COURT: Right.

18               MS. BASSIL: All right.

19               THE COURT: I think before we return to that, we were  
03:42 20      at page 10. The second full paragraph says he will testify  
21       about the social dynamics of the social blob. I think  
22       that's --

23               MS. BASSIL: He will testify about the -- I'm sorry.

24               THE COURT: Some evidence about the characteristics of  
25       the internet and his observations in his studies, I think, are

1       okay. The anonymous, semi-anonymous, egalitarian nature, those  
2       are things we've heard about, and he could perhaps talk about  
3       that.

4                   MR. GROHARING: But my concern there, your Honor, is  
5       that we're going to get close to the blobs. If he's talking  
6       about --

7                   MS. BASSIL: No, he's going to talk about the  
8       internet.

9                   THE COURT: Well, we'll police it. We'll police it.

03:42 10                   MR. GROHARING: I don't know that we need an expert to  
11       say that people talk on the internet in ways that --

12                   THE COURT: We may not. Right.

13                   MS. BASSIL: It's more than that.

14                   MR. GROHARING: Well, that's the concern. More than  
15       that is the blob.

16                   MS. BASSIL: No, it's not.

17                   THE COURT: All right. Well, we'll control it.

18                   To the extent that -- I'm not sure I understand the  
19       next paragraph. To the extent that it's an attempt at some  
03:43 20       sort of either probability or sort of numerical assessment, I'd  
21       have to hear how it was reliable, and I doubt that it is.

22                   MS. BASSIL: He will talk about scientific  
23       methodology, your Honor, which --

24                   THE COURT: Having in mind that the question is not at  
25       any given point whether the defendant was likely to become a

1 violent terrorist --

2 MS. BASSIL: Uh-huh.

3 THE COURT: -- the question is whether on the  
4 government's evidence as an historical matter he did things  
5 that constitute the offenses charged. So probability is not a  
6 part of the case.

7 MS. BASSIL: Well, it is as to comments on  
8 Mr. Kohlmann, all right? Mr. Kohlmann does not use scientific  
9 methodology. He does not use comparative analysis. He does  
03:44 10 not have a valid scientific opinion. And to that extent, I  
11 think Dr. Sageman can talk about how one should study a subject  
12 or how he has studied a subject.

13 THE COURT: Well, we'll --

14 MR. GROHARING: It seems as though these challenges  
15 should have been made perhaps during a *Daubert* hearing for  
16 Mr. Kohlmann, to raise these issues. To call an expert to --

17 THE COURT: Well, that general issue was raised. I  
18 just am not clear what he might say about this.

19 MS. BASSIL: He's not really going to talk about the  
03:44 20 "39 Ways," your Honor. I think there's two questions about it.  
21 He is going to talk about the person who wrote the original  
22 Arabic, and he will talk about whether it's a training manual.

23 MR. GROHARING: I think we're --

24 THE COURT: Well, this is -- okay. Go ahead.

25 MR. GROHARING: I was going to say I think we're

1 getting, again, back into the indicators that your Honor's  
2 already --

3 MS. BASSIL: Mr. Kohlmann testified it was a training  
4 manual. That was not in his report. I counted 53 instances  
5 where Mr. Kohlmann went beyond the scope of his report. It  
6 seems to me that Dr. Sageman is allowed to provide an answer  
7 that contradicts Mr. Kohlmann. You can call it impeachment,  
8 whatever you want, but that's what he's going to say.

9 Mr. Kohlmann said it was a training manual; he's going to say  
03:45 10 it wasn't.

11 MR. GROHARING: Well --

12 THE COURT: Say it wasn't on what basis?

13 MS. BASSIL: What was Mr. Kohlmann's basis? He didn't  
14 have a basis; he just said it.

15 THE COURT: Well --

16 MS. BASSIL: You know, I mean, he said a lot of  
17 things. He said that the "State of the Ummah" received rave  
18 reviews in an Afghanistan training camp. Tell me what the  
19 basis of that was. Was it a newspaper article in the *Kabul*  
03:46 20 *Star*, a must see? I mean --

21 THE COURT: Well, it sounds like the basis is he got  
22 away with it --

23 MS. BASSIL: No.

24 THE COURT: -- so we should get away with it. And  
25 sometimes that's true.

1                   MR. GROHARING: The defense chose not to ask  
2 Mr. Kohlmann what his basis was for it.

3                   THE COURT: Well, to the extent this is a  
4 probabilistic computation --

5                   MS. BASSIL: No, what he can say is --

6                   THE COURT: -- then I think it's not --

7                   MS. BASSIL: -- it's not a training manual. He's seen  
8 training manuals; it's not a training manual. He has a basis  
9 for saying it's not a training manual.

03:46 10                   THE COURT: Well, we may just have to wait and see  
11 what is attempted under that.

12                   The next paragraph, then, has a bunch of bullet  
13 points, is said to be a response to something that Kohlmann had  
14 in his report but he did not testify to.

15                   MS. BASSIL: That's correct. The only thing he  
16 testified to -- let me just see. He talked about coded  
17 language. Kohlmann did testify to that.

18                   THE COURT: Well, to the extent the report -- the  
19 Kohlmann report talked about a profile, there was not a  
03:47 20 profile. So if these bullets were understood to be a  
21 counter-profile, then I think they don't meet the evidence.

22                   MS. BASSIL: Well, he can -- it seems to me Kohlmann  
23 talked about coded language and he wasn't talking about it in  
24 terms of a profile or not. He testified to it. So I believe  
25 Dr. Sageman can offer an alternative.

1                   THE COURT: Yeah. Some of these things as integral  
2 pieces themselves as opposed to support for a profile might be  
3 admissible; for example, Salafi-Jihadi is not Takfiri. That is  
4 something, I suppose, he can talk about, for example, and coded  
5 language is another one, but not as is set out in the report as  
6 support for a profile.

7                   MS. BASSIL: No, I meant as a separate topic.

8                   THE COURT: All right.

9                   MR. GROHARING: The paragraph above, your Honor, about  
03:48 10,000 terrorists on chat forums and this is no indication  
11 of propensity of becoming a terrorist, I don't think that's  
12 based on your past --

13                  THE COURT: That's probably either just obvious or  
14 blob, one of the two.

15                  MS. BASSIL: It doesn't say there are 10,000  
16 terrorists. It says --

17                  THE COURT: They're not, right.

18                  MS. BASSIL: Right.

19                  THE COURT: I mean, the first couple of paragraphs are  
03:48 tautologies, I guess.

21                  MR. GROHARING: The possession of extreme ideological  
22 materials is not a measure of someone's radicalization. I  
23 assume he's not going to testify to that?

24                  MS. BASSIL: No, I don't think Mr. Kohlmann testified  
25 to that. I mean, I know the government's going to argue that.

1 It seems to me it's argument one way or the other, fair or not,  
2 but --

3 THE COURT: Right. Yeah. That is argument.

4 MS. BASSIL: Yeah.

5 THE COURT: Okay. I think we've kind of narrowed  
6 this -- the scope. So we'll begin with Dr. Sageman.

7 MS. BASSIL: Yes. And I'll go over with him what's  
8 not going to be talked about.

9 MR. GROHARING: Two more bullets we haven't gotten to  
03:49 10 yet -- these both seem to be out. They're inconsistent with  
11 your Honor's previous rulings -- having a grievance against the  
12 West, and those are real --

13 MS. BASSIL: I'm sorry. Where are you? I didn't see  
14 where you're referring to.

15 MR. GROHARING: The last two bullets on page 11.

16 MS. BASSIL: He's not going to talk about it in that  
17 form. He will talk about what al Qa'ida grievances were.  
18 Basically, you know, he's not going to --

19 THE COURT: As expressed?

03:49 20 MS. BASSIL: I'm sorry?

21 THE COURT: As they expressed them?

22 MS. BASSIL: Yes. Yes, as they expressed them and as  
23 he understood them and as he knew them.

24 MR. GROHARING: It seems like he's doing a comparative  
25 analysis of the defendant's statements and al Qa'ida's

1 grievances.

2 MS. BASSIL: That's not his area. That's what  
3 Dr. March and Dr. Fadel did.

4 MR. GROHARING: All right.

5 MS. BASSIL: He could talk about it, but we realize  
6 there's been so much discussion of it, we're not going to do  
7 that.

8 THE COURT: Okay. All right. So what's your -- so  
9 assuming we begin with him, what's your time estimate?

03:50 10 MS. BASSIL: Well, if I don't get interrupted a lot  
11 and there aren't a lot of sidebars, I think I could do it in an  
12 hour, hour and a half tops.

13 THE COURT: We might finish him tomorrow?

14 MS. BASSIL: It depends on the cross-examination and  
15 it depends --

16 THE COURT: The word was "might."

17 MS. BASSIL: Right.

18 THE COURT: We might?

19 MS. BASSIL: Right. Right.

03:50 20 THE COURT: Okay.

21 MS. BASSIL: I am going to do everything I can -- and  
22 I believe that I can finish his direct, all right? Don't hold  
23 me to this --

24 THE COURT: No, I won't.

25 MS. BASSIL: -- but I hope that I will finish his

1 direct before the break or shortly after.

2 THE COURT: I'm just trying to get an idea, that's  
3 all. I'm just trying to see where we are.

4 MS. BASSIL: But, again, it depends on objections and  
5 sidebars and so forth.

6 THE COURT: Okay.

7 MR. CHAKRAVARTY: That raises the issue, not whether  
8 the defendant is going to testify, but should we have a  
9 charging conference? Should we schedule a charging conference?

03:51 10 THE COURT: We'll start to think about it.

11 MR. CHAKRAVARTY: Fair enough.

12 THE COURT: I don't know that I've had any requests  
13 from the defense. Do I?

14 MR. CARNEY: You will tomorrow, your Honor.

15 THE COURT: Okay.

16 MR. CARNEY: I'm not going to deal with boilerplate,  
17 just the nuances of --

18 THE COURT: Yeah. I will give -- you probably have  
19 already found samples of my instructions.

03:51 20 MR. CARNEY: I have them in my own collection.

21 THE COURT: Yeah. So, yeah, the evaluation of the  
22 evidence and all of that stuff you don't have to submit.  
23 Burden of proof, I think everybody knows what that is. So,  
24 yeah, the statutes and the elements and things like that are of  
25 principal interest to us.

1                   MR. CARNEY: Can I ask your Honor to remind me of  
2 something? I know I've tried at least two jury trials with  
3 your Honor. Do you send a written copy of your instructions to  
4 the jury?

5                   THE COURT: That's evolved. I don't as a matter of  
6 course. I prepare a written form for myself. I do not  
7 slavishly read the copy that is in front of me because I think  
8 that interferes with the teaching opportunity, so I use it more  
9 as a template, although there are some places where it's  
03:52 10 necessary to be precise and I pay a little more attention to  
11 it. But for that reason, the text that I have prepared is not  
12 an accurate reflection of what I actually say to the jury.

13                  Our court reporters have become so good that it is  
14 possible to produce an accurate and certified copy of my  
15 instructions relatively soon after I have actually given them.  
16 I don't volunteer it to the jury, but if they ask, I can  
17 provide them with the transcript of what I've actually said.

18                  MR. CARNEY: If it would be of any value, I'm prepared  
19 to submit a motion asking that the Court give the instructions  
03:53 20 in written form to the jury. The reason for that is both my  
21 experience and Attorney Bassil's experience in a dozen cases in  
22 the last three years in the superior court where judges have  
23 sent a written copy to the instructions to the jury has had a  
24 dramatic effect. Number one, there are almost no questions  
25 asked by the jurors. And so, instead of their belaboring on

1       things that they could answer right away, it's just remarkable  
2       that there are no questions. And on the whole, verdicts, both  
3       pro and con to the defense, seem to come a bit sooner than they  
4       are when the jurors aren't given the instructions. It was  
5       helpful. That's our view.

6                  THE COURT: Well, I interpret that as a request that  
7       the transcript be provided without waiting for a request.

8                  MR. CARNEY: Correct. And then they would not have  
9       the instructions until we have a certified transcript, which  
03:54 10       may be a day or a day and a half, or it could be even --

11                 THE COURT: Oh, no, it will be a matter of hours, if  
12       that. First of all, the instructions -- it will be only the  
13       instructions. So, you know, it omits other events that day,  
14       like argument, and so on and so forth. So it would be a focus  
15       on the instructions. And so it's a subset of the full day.

16                 MR. CHAKRAVARTY: We'll think about it, if you don't  
17       mind, your Honor, and let you know during the charging  
18       conference.

19                 THE COURT: Frankly, in this case I think it's  
03:54 20       inevitable they will ask for it. So to compress the time and  
21       volunteer it.

22                 Just briefly on this, it is my -- this may also be  
23       well known. It is my practice to instruct the jury on the  
24       substance of the charges before final argument, then have  
25       arguments, and then I do the evaluation of the evidence after

1       that. But I think it is helpful for them in hearing the  
2       arguments to have been instructed already as to the elements of  
3       the crimes, and so on and so forth, and some of the terms of  
4       art that they'll be hearing about.

5                    MR. CARNEY: Excellent.

6                    THE COURT: So I start arguments and I finish.

7                    MR. CARNEY: I recognize that we have not completed  
8       our case, but would it be possible to find out if the  
9       government is anticipating rebuttal witnesses?

03:55 10                    MR. CHAKRAVARTY: Based on our just-conversation and  
11       based on Ms. Bassil's prediction of where Dr. Sageman will go,  
12       I would say there's less than a 50 percent chance that we would  
13       present a witness.

14                    THE COURT: Okay. All right. Good. Thank you.  
15       We'll be in recess.

16                    THE CLERK: All rise for the Court. The Court will be  
17       in recess.

18                    (The Court exits the courtroom and the proceedings  
19       adjourned at 1:16 p.m.)

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1 C E R T I F I C A T E  
2

3 We, Marcia G. Patrisso, RMR, CRR, and Cheryl  
4 Dahlstrom, RMR, CRR, Official Reporters of the United States  
5 District Court, do hereby certify that the foregoing transcript  
6 constitutes, to the best of our skill and ability, a true and  
7 accurate transcription of our stenotype notes taken in the  
8 matter of Criminal Action No. 09-10017-GAO-1, United States of  
9 America v. Tarek Mehanna.

10

11 /s/ Marcia G. Patrisso  
12 MARCIA G. PATRISSO, RMR, CRR  
Official Court Reporter

13 /s/ Cheryl Dahlstrom  
14 CHERYL DAHLSTROM, RMR, CRR  
Official Court Reporter

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16 Date: December 13, 2011

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